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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Thirty-ninth session

SUMMARY RECORDS OF THE 889th TO 913th MEETINGS

Held at the Palais des Nations, Geneva,
from 4 to 22 March 1991

Volume I

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Chairman: Mr. SHAHI

Rapporteur: Mr. BANTON

The list of members attending the session may be found in the report of the Committee to the General Assembly (Official Records of the General Assembly, Forty-sixth Session, Supplement No. 18 (A/46/18), paras. 6 and 7).

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* The Committee also held three closed meetings, the summary records of which (CERD/C/SR.899, 904 and 906/Add.1), contained in document CERD/C/SR.889-913 (Vol.II), were issued in restricted distribution.

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8 March 1991

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Thirty-ninth session

SUMMARY RECORD OF THE 889th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 4 March 1991, at 10.30 a.m.

Chairman: Mr. SHAHI

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Opening of the session

Adoption of the agenda

Organization of work

Statement by the Under-Secretary-General for Human Rights

The meeting was called to order at 10.40 a.m.

OPENING OF THE SESSION

1. The CHAIRMAN welcomed members of the Committee on the Elimination of Racial Discrimination to its thirty-ninth session.

ADOPTION OF THE AGENDA (item 1 of the provisional agenda) (CERD/C/211)

2. The CHAIRMAN, drawing attention to item 4 of the provisional agenda (Consideration of reports, comments and information submitted by States parties under article 9 of the Convention), said that the timetable for the consideration of reports of States parties had been replaced by a new provisional timetable, which had been circulated to members. In addition to the postponement of consideration of the reports of Malta, Canada and the United Kingdom until later in the session, letters had been received from Iraq and Yemen requesting deferment of consideration of their reports until a subsequent session.

The provisional agenda, as amended, was adopted.

ORGANIZATION OF WORK

3. The CHAIRMAN suggested that, in view of the changes in the timetable, the Bureau should meet without delay to consider how the Committee could make best use of the time available.

4. Mr. BANTON said that it would be useful to hear the views of Committee members who were not members of the Bureau on the possible discussion of questions of particular concern to them. He, for instance, had proposals to make on agenda item 2 (b) (Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights) and had submitted a draft model report in that connection. It was his understanding that various other members also had proposals to make on the improvement of the Committee's working methods with a view to ensuring more effective implementation of the Convention. It would be useful to hear those proposals early in the session.

5. The CHAIRMAN said that Tuesday, 5 March, when only one report was to be considered, would provide a good opportunity for an overall review. He suggested that, prior to the discussion, members should give careful consideration to the questions raised in the Committee's report to the General Assembly (A/45/18), including the question of the World Conference on Human Rights, and to the report of the third meeting of persons chairing the human rights treaty bodies (A/45/636). He would also welcome suggestions from Committee members in connection with the address he was to make on 21 March 1991 on the occasion of the International Day for the Elimination of Racial Discrimination.

6. Mr. FERRERO COSTA agreed that the best possible use must be made of the Committee's time, especially since, for the first time in three years, the Committee was in a position to meet twice in the same year. He therefore

endorsed the suggestion that an exchange of views should be held the next day on the Committee's contribution to the implementation of the Convention and to the World Conference on Human Rights.

7. The CHAIRMAN said he took it that the Committee agreed to exchange views on those matters on the following day.

It was so agreed.

8. Mr. FERRERO COSTA agreed with Mr. Banton's proposal that consideration of item 2 (b) should include an exchange of views on improved reporting procedures and on the work of the rapporteurs appointed to make a preliminary examination of States parties' reports.

9. Mr. VIDAS supported Mr. Banton's comprehensive proposal on improved reporting procedures, including the draft model report which had been circulated to members, and suggested that the Committee might prepare a recommendation to that effect, based on the revised guidelines. His own ideas concerning the Committee's working methods related to the Committee's own report to the General Assembly, which he felt required improvement. It would also be extremely useful if an informal meeting with the Under-Secretary-General for Human Rights could be arranged, as at the previous session.

10. Mrs. SADIQ ALI said that the time had come to address the problem of inadequate reporting by States parties and the lack of standardization in reports, to which the model report proposed by Mr. Banton provided a good response.

11. Mr. WOLFRUM agreed that an assessment of States parties' reporting was needed and endorsed Mr. Banton's proposal. The latter's suggestions could be combined with those made by Mr. Vidas, since there was room for improvement in the Committee's own report to the General Assembly.

12. Mr. LECHUGA HEVIA drew attention to an important proposal made by Mr. Vidas at the previous session concerning the need for the Committee to give its views on racial discrimination in the world in general. In view of recent world events and their repercussions on racial discrimination, priority should be given to a discussion of that key issue at the current session.

13. Mr. Banton's suggestion was very helpful; a comprehensive review of the reports of States parties and of the Committee's report to the General Assembly would enhance the effectiveness of the Committee's work in ensuring implementation of the Convention.

14. Mr. DE GOUTTES supported Mr. Banton's proposal regarding possible improvements in the presentation of the material contained in reports, as well as Mr. Vidas' suggestion for enhancing the Committee's own report to the General Assembly.

15. He requested additional information on the status of the current session and, in particular, the proposed "contingency reserve fund". He hoped that the holding of the current session would not affect the session to be held in August.

16. Mr. YUTZIS observed that a number of organizations were working on the general issue of racism and were, in particular, trying to identify new aspects. In his view, the Committee should take a separate initiative and consider the matter in the context of the general discussion of racism throughout the world.

17. The Committee's report to the General Assembly needed to be modified in both form and content. There were two problems regarding the reports of States parties. There was the political aspect, which was connected with the political will of States and could not therefore be ignored. The Committee must make its own assessment but for the moment not enough reports were available on which to base a judgement. There was also the problem of the genuine practical difficulties faced by States in drafting reports. The Committee must take both points into account.

18. The Committee should not forget its decision to hold a joint session with the Sub-Commission in August, and should give thought to its method of work and the content of its discussions during that session.

19. The CHAIRMAN said that, for its discussion of item 3, the Committee would have before it 25 reports received from 15 States parties which awaited consideration by the Committee under article 9 of the Convention. In addition, 281 reports from 115 States parties were overdue and had not yet been received. Those figures emphasized the difficulties encountered by States parties in preparing reports.

20. In connection with item 2 (b), members should prepare themselves carefully for their discussion with the Under-Secretary-General for Human Rights on racial discrimination in the world as a whole.

21. Mr. FERRERO COSTA inquired whether the Committee would take up the report of Barbados in the light of the probable absence of the representative of that country. In his view, if there was no explicit request for a postponement, the Committee should proceed immediately to consider the report. He therefore proposed that the Committee should take up the report of Barbados unless there were compelling reasons for not doing so.

22. The CHAIRMAN said that, if there was no objection, he would take it that the Committee wished to commence its consideration of the report of Barbados at the following meeting and then proceed to discuss items 3 and 2 (b).

It was so decided.

23. The CHAIRMAN said that he would welcome suggestions from members regarding suitable subjects for discussion with the Sub-Commission at the joint session in August.

STATEMENT BY THE UNDER-SECRETARY-GENERAL FOR HUMAN RIGHTS

24. **Mr. MARTENSON** (Under-Secretary-General for Human Rights) extended his best wishes to members for success in their work during the thirty-ninth session of the Committee and assured them that they would have his full support and assistance, as well as that of his colleagues in the Secretariat.

25. He took special pleasure in noting that, for the first time in a number of years, sufficient financial contributions from States parties were on hand to permit the convening of the current spring session. That development did not, unfortunately, imply that the financial difficulties that had so seriously affected the Committee's operations in recent years had been overcome once and for all.

26. He was pleased to inform the Committee that, at its forty-fifth session, the General Assembly had addressed the Committee's financial problems in a more determined and comprehensive way than ever before by adopting resolution 45/88 of 14 December 1990. In that resolution, the General Assembly had, inter alia, expressed its grave concern at the disruption of the Committee's meeting schedule, including the cancellation of the spring 1990 session, and the fact that the proper functioning of the Committee continued to be affected by the non-payment by some States parties of their financial obligations under the Convention. It had appealed to States parties to pay their contributions for 1991 before 1 February 1991 so as to enable the Committee to meet regularly; it had decided to request the Secretary-General to seek, at the earliest opportunity, the agreement of the States parties to the establishment of a "contingency reserve fund", as envisaged in Commission on Human Rights resolution 1990/25; and it had invited the Secretary-General to explore other possibilities of establishing a more secure basis for the future financing of all the costs of the Committee.

27. Despite such strong expressions of concern and support by the General Assembly, there was no guarantee, as he had just noted, that financial problems would not recur and he did not anticipate a solid improvement until the "contingency reserve fund" was successfully established. He had recently been informed by Headquarters that the Secretary-General was proceeding with the preparation of a note verbale seeking the States parties' agreement to the establishment of the fund.

28. The Committee was the cornerstone of work to eliminate discrimination based on race, and the organization would continue to seek every means of assisting the Committee in its task. Elimination of discrimination was an objective which involved all the Organization's activities - treaty implementation, investigation of human rights violations, studies, research, standard-setting, advisory services, technical assistance and public information. As coordinator of United Nations activities under the Programme of Action for the Second Decade to Combat Racism and Racial Discrimination, he was giving special attention to efforts in that direction.

29. The fight against racism was not the sole responsibility of any single organization or sector in the United Nations system, but concerned them all. With a view to making members of the United Nations family more aware of the need to act against racial discrimination, he had convened an inter-agency

consultation in May 1990, and as a result of that consultation every agency or body had been asked to identify a focal point for its activities to combat racial discrimination. A further consultation was to take place in the early spring of 1991.

30. In December 1990, a seminar had been held in Geneva on the political, historical, economic and cultural factors contributing to racism, racial discrimination and apartheid, presided over by the Committee's own Chairman; its report was to be made available to members. The seminar had recommended that the Committee's activities should receive more support and that it should be given all the time it needed for its deliberations. In addressing the seminar, he had stressed the importance of establishing national machinery for dealing with racism, and had suggested that States consider setting up commissions for racial harmony and appointing ombudsmen to deal with cases of racial discrimination. The seminar had followed up those suggestions, which were reflected in the report. He hoped that in future more recommendations could be made for methods of dealing with new and emerging forms of racism, notably against migrant workers and immigrants.

31. Although the picture with regard to racial discrimination the world over was far from encouraging, there had been some positive developments in recent weeks. The President of South Africa had announced on 1 February that some of the major pillars of apartheid, the Land Acts of 1913 and 1936, the Group Areas Act of 1966, and the Development of Black Committees Act of 1984, were to be repealed. Legislation to repeal the Population Registration Act was also expected to be presented in due course, which would open the way to full political participation by all South Africans on a basis of equality.

32. Despite those changes, however, apartheid had not yet been eradicated. The international community should therefore continue to give high priority to programmes aimed at overcoming racism and racial discrimination. It should intensify its efforts to provide assistance and relief to victims of racism and all forms of racial discrimination and apartheid, and should take all necessary measures to give effect to the Programme of Action for the Second Decade to Combat Racism and Racial Discrimination.

33. A fact sheet on the Committee and its activities was now in course of preparation. It would be one of a series of fact sheets that had been distributed all over the world; they had achieved considerable success in disseminating the United Nations human rights message. The study entitled "The first 20 years: progress report of the Committee on the Elimination of Racial Discrimination" was also to be issued shortly.

34. He was pleased to report that by resolution 45/155, adopted at its forty-fifth session, the General Assembly had approved the convening of a World Conference on Human Rights in 1993. The Conference's main purposes would be: to assess the progress made in the human rights field since the adoption of the Universal Declaration of Human Rights; to examine the relationship between development and the enjoyment by everyone of economic, social and cultural rights, as well as of civil and political rights; and to evaluate the effectiveness of United Nations human rights activities and mechanisms with a view to their improvement and the improvement of implementation of existing human rights standards and instruments.

The first meeting of the Preparatory Committee was expected to be held in Geneva from 9 to 13 September 1991; it should be noted that the resolution encouraged participation by chairmen or other designated members of human rights expert bodies in that Committee's work.

35. The success of the Conference would depend in large measure on the care with which the preparatory work was carried out. There would be a need for consultations between the specialized agencies and other United Nations organs dealing with human rights, the academic community, non-governmental organizations, and, of course, the human rights expert bodies themselves, which might wish to submit specific recommendations of their own. Ways of improving work to combat racial discrimination would be one of the principal themes of the Conference, and the Committee's contribution would be crucial; he looked forward to receiving its recommendations and suggestions.

36. The General Assembly had recently urged all relevant organizations and bodies in the United Nations system to take into account, when carrying out their programmes, the recommendations of the Declaration and Plan of Action adopted at the World Summit for Children in September 1990. He was sure that the Committee would be able to make an important contribution to promoting the rights of the child, notably the basic right to equality, and suggested that it might consider how to place emphasis on aspects of its work which related to children.

37. The third meeting of chairpersons of human rights treaty bodies, held in October 1990, had again adopted a number of useful conclusions and recommendations concerning the streamlining and harmonization of the operations of those bodies. In particular, it had recommended that the consolidated guidelines for the initial part of State party reports under the various treaties, as drawn up in consultation with all the treaty bodies, should be added to the relevant guidelines as soon as possible, and that the Manual on Reporting drawn up by the United Nations Institute for Training and Research (UNITAR) and the Centre for Human Rights should be published as soon as possible and widely disseminated. In addition, the Secretary-General and the General Assembly should do their utmost to ensure that more resources were provided for secretariat servicing, so as to enable the treaty bodies to function effectively. Steps should be taken to promote greater interaction among the treaty bodies as a means of contributing to the effective development of the human rights treaty system as a whole. To that end, consideration should be given to appointing several members of each committee to be responsible for following developments in one of the other treaty bodies, and reporting thereon to his or her own committee. It had been recommended that other innovative arrangements should be explored, such as the holding of joint sessions of working groups of two or more committees to explore a specific issue.

38. In preparing general comments, general recommendations or suggestions on topics that were potentially of major relevance to the provisions of an instrument that was supervised by another body, the committee concerned should consider undertaking some appropriate form of consultation before finalizing the text in question. The General Assembly should take appropriate action to institutionalize the meeting of chairpersons, and to ensure that it was held

at least once every two years: in addition, as far as possible, supervision of new human rights treaty obligations should be entrusted to one or other of the existing treaty bodies.

39. It had further been recommended that the work of the treaty bodies should be fully reflected in the agenda of the proposed World Conference on Human Rights, and that the treaty bodies should be consulted as far as possible about preparations for such a Conference. Each United Nations Information Office should on a routine basis make available, particularly to those sectors which had direct responsibility for the implementation of human rights, copies of reports submitted by the State concerned, along with the summary records relating to the examination of the reports. In addition to national and regional or subregional training programmes dealing with reporting or other aspects of the implementation of State party obligations under the various human rights instruments, regular training programmes should be arranged for officials of United Nations bodies involved in technical cooperation programmes.

40. A number of those recommendations were being followed up: thus, efforts were under way to strengthen the staffing of the Centre for Human Rights, both on an intermediate basis and in the next biennial budget. The Secretary-General would shortly be transmitting the consolidated guidelines to all States parties and would be informing them of the modalities for their implementation. The Manual on Reporting was being printed and would be circulated to States parties in the near future. Approval had been obtained from the Economic and Social Council and the General Assembly regarding the financing of the recurrent costs of the computerized data base; the Secretary-General was now planning to invite States Members of the United Nations, and in particular those States which were parties to United Nations human rights instruments, to contribute to the initial costs involved in the installation of the system. It was hoped that that system could become operational within the next two years.

41. Outlining developments in the Centre's technical assistance programme, he said that a training course was to be held the following week in San Remo on the implementation of international human rights instruments and the administration of justice for officials of French-speaking African countries; similar courses were planned for officials of English and Portuguese-speaking African countries. A regional workshop on the administration of justice and human rights for African countries was to be organized in Cairo, and a similar workshop in Barcelona for European countries. In addition, national training courses on the application of United Nations human rights mechanisms and procedures were to be held in Caracas, Rio de Janeiro and other parts of the world in 1991: in all those courses, the work of the Committee was being highlighted.

42. At the Committee's previous session, he had taken part in wide-ranging discussions with members on the Organization's future work in the field of human rights, with particular reference to the elimination of racial discrimination. He greatly valued such exchanges, and would be at the Committee's disposal to continue them if it so desired.

43. In some regions of the world - notably South Africa - the cause of human rights and the struggle against discrimination appeared to be making encouraging progress, but other regions were still far from being able to celebrate achievement of the "larger freedoms" and "human worth and dignity" enshrined in the United Nations Charter. There was a need for constant vigilance against the recurrence of human rights abuses and discrimination. The Committee continued to play a crucial part in upholding the cause of human rights, and he wished it every success in its deliberations.

44. The CHAIRMAN thanked the Under-Secretary-General for Human Rights for his important statement, which had helped to define the orientation of the Committee's future work. He paid tribute to its efforts to coordinate the fight against racial discrimination at the national, regional and global levels, and was glad to learn that the Centre was to be provided with additional resources. The Committee very much welcomed the Under-Secretary-General's willingness to continue the dialogue with it.

45. Much would be expected of the Committee at the forthcoming World Conference on Human Rights. If he, as Chairman, was to participate in the Preparatory Committee for that Conference, he would need to be adequately briefed, and contributions from members in that connection would be crucial. Suggestions as to how the recommendations of the meeting of chairpersons could best be implemented would also be welcome.

The meeting rose at 11.55 a.m.

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8 March 1991

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Thirty-ninth session

SUMMARY RECORD OF THE 890th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 5 March 1991, at 10 a.m.

Chairman: Mr. SHAHI

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Consideration of reports, comments and information submitted by States parties under article 9 of the Convention

Seventh periodic report of Barbados

Organization of work (continued)

Submission of reports by States parties under article 9, paragraph 1, of the Convention

The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4)

Seventh periodic report of Barbados (CERD/C/131/Add.13)

1. The CHAIRMAN said that the Committee regretted the absence of a government representative to present the report but, in accordance with established practice, would proceed to consider the seventh periodic report of Barbados.

2. Mrs. SADIQ ALI, speaking as rapporteur entrusted with the preliminary examination of the report, commended the regularity with which Barbados, a small developing country with severe economic constraints, submitted its periodic reports. Barbados was a multiracial country and had modelled itself on the British parliamentary system, with a free multi-party system of government.

3. In connection with article 2 of the Convention, the population breakdown given in the annex to the report was the same as in the previous report, despite the fact that the government representative had stated when the sixth periodic report had been considered that the various ethnic groups had been identified more with the type of work they did than with the concept of race. She asked whether any action was contemplated to review that identification, as had been suggested by the Committee. It emerged from the table that the largest group was the negro/black population, followed by the white and "mixed" groups. In terms of occupation, the Chinese, Syrian, Lebanese and East Indians appeared to belong to the commercial class, while there were also East Indians in the medical profession. The Amerindians were very few in number and seemed to have been seriously marginalized, and she wished to know whether any steps were being taken to preserve their culture and way of life. Further information was also needed on the exact ethnic origin of the "mixed" group, namely, whether they were of white and negro, white and Amerindian or negro and Amerindian parentage. She requested data on their employment, educational level, housing situation and access to public health services; the previous report had indicated that the Government had been in the process of establishing a free medical scheme.

4. The previous report had also referred to a system of progressive taxation and education to enable Barbadians of African descent to achieve greater social and economic mobility. She wished to know what status they enjoyed in society as a whole, whether they were still mostly employed in the tourist industry, light manufacturing industries and sugar-cane farms, whether any of them had moved into white-collar jobs, and what percentage they represented. It would also be useful to know to what extent the susceptibility of the Barbadian economy to external economic developments had affected the standard of living of the various population groups, especially those employed as blue-collar workers, and whether there were any government poverty-alleviation programmes. What was the unemployment rate and which sectors of the population were most affected by unemployment?

5. Referring to article 4 of the Convention, she said that, although it was true that the Constitution provided for equal treatment under the law and that its provisions were generally respected in practice, there was evidence that that constitutional provision and the Public Order Act did not ensure the safeguards required by article 4, which was mandatory in character. An example had been the award, in June 1988, of a government road contract to a black-owned company which had been a high bidder instead of white-owned low bidder; the case had been widely viewed as official racism and had cost Barbados World Bank support for the project. The case came under article 4 (c), for which Barbados did not appear to have adequate legislation. She wished to know whether the Government intended to adopt appropriate legislation to implement article 4 in full.

6. Although the Government provided free legal aid to needy persons and the independence of the judiciary was assured, she asked, in connection with article 6, whether such persons were aware of their rights in general and, in particular, the right to seek redress against any act of racial discrimination contrary to article 6. Barbados, which had a local branch of Amnesty International, was to be commended for its human rights record. She wondered whether there was any possibility of establishing a race relations committee, as in the United Kingdom.

7. There appeared, however, to be room for improvement in the implementation of article 7, which required both measures to eliminate racial prejudice and measures to promote understanding, tolerance and friendship among nations and racial and ethnic groups. The mass media also had a role to play in that respect. The Government of Barbados was referred to the Committee's revised guidelines on article 7 contained in document CERD/C/70/Rev.1 adopted on 6 December 1983, which she hoped the Government would follow in order to provide a more comprehensive picture of its implementation of that article. Finally, the Government had also been asked, at the time of its presentation of the sixth periodic report, whether it was considering making the declaration provided for under article 14 of the Convention.

8. Mr. LECHUGA HEVIA referred to the statement in paragraph 5 of the report that the terms used in the classification of census data on race/nationality did not necessarily provide evidence of racial discrimination when examined in a Caribbean context, and wished to know what exactly was meant by a "Caribbean" context. He also requested an explanation for what was clearly an incorrect classification of the Portuguese, Syrian and Lebanese population as racial groups in the table annexed to the report.

9. Mr. SONG Shuhua said that, although the report was well laid out, more substantive information was required for an understanding of the measures taken in Barbados to implement the Convention. Referring to paragraph 7 of the report concerning article 2 of the Convention, he said that the statements of principle set forth in the Constitution must be translated into practical legislative measures. It was not clear whether and how that was being done, leaving an impression that the legislative measures were inadequate.

10. With regard to article 6, although paragraph 13 of the report referred to constitutional guarantees for fundamental rights and freedoms and provision for redress in the event of violations, there did not appear to be adequate

safeguards to enable citizens of different social and economic levels to enjoy those rights. For instance, had action been taken to enable less educated citizens to seek redress? As could be seen from the table in the annex, some groups formed very small minorities; it would be of interest to know whether there was any provision for them to use their own language in court and, in general, to participate equally in all spheres of life. Small minority groups were also most seriously affected by the external economic influences to which Mrs. Sadiq Ali had referred, and he wished to know whether any special measures had been taken to redress the situation.

11. Mr. VIDAS, referring to paragraph 4 of the report concerning applications to the High Court in the event of an alleged violation of fundamental rights and freedoms, wished to know whether any such cases had been brought before the High Court since the submission of the sixth report. With reference to paragraph 6 and the 1980-1981 population census, he would like to know whether the "mixed" category listed in the annex had declined or increased since the previous report, since no comparative data had been provided.

12. Mr. de GOUTTES welcomed the information given by Mrs. Sadiq Ali about the general economic, political and social situation in Barbados, which had not been provided in the report. Referring to paragraph 4, he asked what kind of appeals could be brought to the Privy Council on a decision of the High Court, and whether that meant that the High Court was not sovereign in its decisions.

13. With reference to paragraph 9 of the report, a serious shortcoming was the lack of information provided about sentences passed by courts for offences of a racist nature; without such information, it was impossible to assess the real implementation of the Convention.

14. He agreed with Mr. Lechuga Hevia that the classification by race in the population breakdown annexed to the report was highly questionable, since there was an apparent confusion between nationality and race.

15. The CHAIRMAN said that, in the absence of a representative of the Government of Barbados, the Committee hoped that its questions and comments would be taken into account in the next report.

16. Referring to the questions raised by Mr. de Gouttes and Mr. Lechuga Hevia on the classification by race in the annex to the report, he drew attention to the broad definition of discrimination in the Convention, which did not require reporting States to give any precise identification of race. For the purposes of implementation of the Convention, therefore, the classification provided might be deemed to be in order.

17. Mr. WOLFRUM agreed that there was no need for the Committee to insist that a distinction be made between race and nationality in the information given in the table annexed to the report. The Convention in fact covered discrimination on grounds other than that of race, as was clear from article 1, paragraph 1, which defined racial discrimination as including discrimination based on "national or ethnic origin". There was therefore no need to question the way the table had been presented.

18. Mr. RHENAN SEGURA said it was not clear to him whether the Government of Barbados had offered any explanation as to why no representative could be present during discussion of its report. In any event, he was greatly concerned at that situation, which made dialogue between Barbados and the Committee very difficult. He understood Barbados had a very large diplomatic representation in the United Kingdom, and it should not have been difficult for it to send a representative to Geneva. He would appreciate some clarification of the position.

19. The CHAIRMAN said that unfortunately the Secretariat was not able to shed any light on the matter; it had written to the Government of Barbados, but had received no response.

20. Mr. LECHUGA HEVIA agreed that the Convention covered discrimination on grounds of nationality as well as on grounds of race. The fact remained, however, that if the table was to include figures for the Portuguese and Syrian components of the population, they should be shown as being not of different races but of different nationalities.

21. Mr. FERRERO COSTA agreed that in future the Committee should make general comments following its consideration of a report by a State party. Such comments would help to devise guidelines on the position to be adopted in particular cases, both on matters of substance and on matters of procedure.

22. It was not the first time that the Committee had been faced with the problem of considering the report of a State party in the absence of its representative. He suggested that the policy should be that if the report of a State party was on the Committee's agenda for consideration and no representative was present, the Committee should automatically proceed to consider the report without having to take any specific decision on the matter, unless the State concerned gave particular reasons for its absence. It should also be the policy that in such a situation the Chairman should write a letter to the State's Permanent Mission in Geneva, informing it that its report had been considered in the absence of a representative, and pointing out that on the next occasion it would be more useful if a representative could be present.

23. Mr. LAMPTEY did not consider there was any incompatibility in the information presented in the annex to the report of Barbados since, as had already been pointed out, article 1, paragraph 1, of the Convention defined racial discrimination as including discrimination based on nationality. The information given was thus correct in that context. If, for example, Syrians in Barbados were discriminated against simply because they were Syrians, that would constitute racial discrimination under the terms of the Convention.

24. On the question of representation of States parties when their reports were being considered, the Committee should take care not to impose burdens on States parties which they were not required to assume under the Convention. Although the Committee had always indicated that representation was useful and would enhance the dialogue, there might well be States that could not attend even when they had permanent missions in Geneva simply because they had no representatives qualified to deal with the subjects discussed. The situation that had arisen was by no means new. The Committee's duty in such cases was,

as it always had been, to consider the report submitted. It would always be possible to indicate in the report that the Committee would have preferred a representative to be present and to suggest that next time one should be sent.

25. Mrs. SADIQ ALI agreed that the Committee need not necessarily insist that a representative be present during consideration of reports of States parties. However, such a presence made for a much better dialogue, since the many questions raised by the reports could then be given proper answers.

26. She proposed that a letter should be sent to the Government of Barbados, suggesting that in future it might depute a member of its mission in the United Kingdom to represent it when its report was being considered by the Committee.

27. Mr. RHENAN SEGURA pointed out that in other treaty bodies, the presence of representatives of States parties when reports were being considered was regarded as crucial to a healthy dialogue between treaty body and State party. In view of the large number of human rights bodies based in Geneva, most missions did in fact have staff experienced in human rights matters. He agreed with the suggestion that in a case where a representative was absent, the Chairman should write to the Mission of the State concerned, so that Governments should feel to some extent under an obligation to be present when their reports were discussed.

28. Mr. YUTZIS said it was an important principle in international law that human rights, particularly in regard to their public law aspects, were interventionist in nature; in other words, human rights were held to justify interference with the otherwise sacrosanct principle of State sovereignty. The procedures by which States were required to respond to questions addressed to them in regard to possible human rights violations had always been of the greatest importance. Such a procedure had been initiated under the Convention and put into effect by the Committee. Over the years, it had become an aspect of that procedure that States parties, although not legally required to do so under the Convention, considered themselves obliged to send representatives when their reports were being considered. The presence of such representatives had considerable symbolic significance; more than that, it was an indication of the importance States parties attached to the Convention, and of the importance they attached to the Committee as a means of engaging in dialogue on matters relating to compliance with the Convention.

29. He would not wish the Committee to give the impression that it was taking a step backwards by showing itself unwilling to recognize the importance of failure by a State party to make an appearance during discussion of its report. He greatly regretted the absence of the representative of Barbados, as he would have regretted the absence the representative of any other State party in the same circumstances. He considered that the procedure to be followed by the Committee in such cases should be formalized.

30. Mr. de GOUTTES was of the view that, following consideration of each report, the Committee should hold a discussion on the general lessons to be learned from it. He was glad to note that the proposal was being followed up, to the extent that the Committee was now engaged in a general discussion on two points arising from the report of Barbados.

31. He agreed that the presence of a State party during consideration of its report was essential if the debate was not to be one-sided. Everything possible should be done to ensure that a representative was sent, either from the State's Permanent Mission in Geneva, or from one of its delegations attending meetings in Geneva, such as, for example, the current session of the Commission on Human Rights. Only if all such efforts failed to produce results should the Committee, as a last resort, send a letter to the Government concerned, regretting the absence of a representative and requesting an explanation.

32. Mr. VIDAS pointed out that the previous day the Committee had decided that it would consider the report of Barbados despite the absence of a representative from that country; as far as he was concerned, that settled the matter. Subsequently, the Committee could express regret that it had had to consider the report in the absence of a representative from Barbados.

33. He suggested that the Committee's conclusions on the two points under discussion, namely, the question of definition of race and the question of the presence of government representatives, should be reflected in the report separately from the conclusion on the report of Barbados. In that way, they would emerge more clearly as distinct recommendations which would serve as guidelines to States parties for the future.

34. The CHAIRMAN said that if such was the Committee's wish, its views on the issue of race and nationality arising from the report of Barbados could be reflected as a separate conclusion in the report. However, there was need for great flexibility in the matter of the presence of government representatives. In the case of Iraq, it could automatically be assumed that, in the circumstances, the Iraqi representative would not be in the best position to respond to questions raised. In the case of Barbados, no reason had been given for the failure to attend, although it was to be presumed that the problem was lack of qualified staff in Geneva and lack of resources to send representatives from Barbados. He suggested that the matter should be left as it stood, although, if the Committee desired, he would send a letter to the Government of Barbados along the lines suggested by Mr. Ferrero Costa.

35. In his own view, there was no need to take any general policy decision on the matter, since it was in any case up to the Committee to decide whether or not to consider a State party's report in the absence of its representative. It would be better to remain flexible and deal with every case according to the particular circumstances.

36. Mr. RHENAN SEGURA pointed out the need to draw a distinction between the cases of Iraq and Barbados. The former had informed the Committee that it was not in a position to send a representative, whereas the latter had sent no reply at all.

37. Mr. LAMPTEY said that he agreed with the Chairman's observations but did not think that any recommendation should be made. States parties had not committed themselves to sending representatives when they had ratified the Convention. Moreover, it was difficult for many States parties to assemble enough competent staff in Geneva when several related conferences were taking place simultaneously. He was not opposed to sending a letter to the

Government, but in the past letters had sometimes produced no response; it might be sufficient to include a reference to the matter in the Committee's report to the General Assembly.

38. Mr. LECHUGA HEVIA agreed with Mr. Lamptey. Under the Convention, States parties had an obligation to submit reports but not to send representatives when their reports were being considered by the Committee. In many cases, small countries like Barbados simply did not have sufficient personnel qualified to deal with the matters of interest to the Committee.

39. Mr. WOLFRUM observed that there seemed to be very little disagreement. States parties were under no obligation to send a representative but the Committee had always encouraged them to do so, as the best means of enhancing its dialogue with them. Thus it was fully consistent with the Committee's policy to point out to States parties that they were encouraged to send a representative.

40. Mr. VIDAS said that it was in the interest of States parties themselves to be present during the consideration of their reports because they could then comment on the Committee's observations and their comments could be included in the Committee's report to the General Assembly.

41. The CHAIRMAN noted that several members had suggested that he should send a letter to the Government of Barbados in the terms mentioned by Mr. Ferrero Costa. The other view that had been taken was that a letter might elicit no response and that it would be better if the Committee were to state in its report that the dialogue and mutual understanding would have been enhanced if a representative of the Government had been present. The possibilities offered by article 9, paragraph 2, of the Convention should also be borne in mind. What action did the Committee wish to take?

42. Mr. YUTZIS noted that there was apparently some difference of opinion as to whether the presence of a representative of the State party was "useful" or even "essential". The Committee must respect not only the law, in both letter and spirit, but also past practice. Statistics would show that most States parties, whether consciously or unconsciously, had accepted the practice that a representative should be present during the Committee's consideration of their reports. It was important that the practice of encouraging States parties to send a representative should not be weakened. He therefore considered that the Committee should send a letter to the State party regretting the fact that a representative had not been able to attend, drawing attention to the Committee's consistent practice in that respect, and emphasizing the important role played by the representatives of States parties in the Committee's proceedings. All that could be expressed in such a way that the State party did not feel itself to be under pressure.

43. Mr. FERRERO COSTA said that the text of a letter as outlined by the Chairman might be the best solution, since it represented a smooth and flexible way of drawing attention to the absence of a representative which in no way implied that the State party had a legal obligation to send one. In order to settle the question whether the presence of a representative should be mentioned in connection with article 9, paragraph 2, of the Convention, it would be necessary to debate the scope of that provision and, in particular,

to decide whether it related only to substantive issues or to procedural issues as well. Such a debate could perhaps be held at a subsequent meeting.

44. The CHAIRMAN noted that it seemed to be agreed that a letter should be sent to the Government of Barbados. He therefore requested Mr. Ferrero Costa to assist the Rapporteur in drafting it. The Committee could certainly discuss further the scope of article 9, paragraph 2, of the Convention, but that related to the Committee's internal procedure and was not of specific concern to Barbados. Consideration of that country's seventh periodic report was therefore concluded.

The meeting was suspended at 11.45 a.m. and resumed at 12.15 p.m.

ORGANIZATION OF WORK (continued)

45. The CHAIRMAN informed the Committee that the previous day the Bureau had recommended that the Committee should consider, after the report of Barbados, agenda items 3 (Submission of reports by States parties under article 9, paragraph 1, of the Convention) and 2 (b) (Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights). The Bureau had decided that under item 3 the issues to be considered should be (i) the designation of members of the Committee to contact representatives of defaulting States parties, (ii) Mr. Banton's model report and the consolidated guidelines, (iii) technical assistance, and (iv) the report of the Committee to the General Assembly (improvement of style and content). Under item 2 (b), the issues to be considered should be (i) the report of the Third Meeting of Persons Chairing the Human Rights Treaty Bodies (A/45/636), (ii) universal ratification of, or accession to, the Convention (draft resolution of Mr. Banton), and (iii) regional reviews of the progress of, and the information received by, the Committee.

46. Mr. BANTON (Rapporteur) explained some of the procedural aspects of the Committee's discussions on agenda items 3 and 2 (b). An essential document for those discussions would be the report of the Third Meeting of Persons Chairing the Human Rights Treaty Bodies (A/45/636). Apart from the issues proposed by the Bureau, three other matters required discussion: the Committee's preparations for the meeting with the Under-Secretary-General for Human Rights; its preparations for the joint meeting with the Sub-Commission on Prevention of Discrimination and Protection of Minorities, to be held in August 1991; and its contribution to the World Conference on Human Rights.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 9, PARAGRAPH 1, OF THE CONVENTION (agenda item 3)

The designation of members of the Committee to contact representatives of defaulting States parties

47. Mr. BANTON raised the question whether the members designated to contact representatives of defaulting States parties should be selected on a regional or some other basis.

48. Mr. WOLFRUM said that, since so many reports had been overdue for so many years, the Committee really must do something to encourage defaulting States parties to submit their reports. A system had been proposed in the report of the Third Meeting of Persons Chairing the Human Rights Treaty Bodies (A/45/636) and the Committee should adopt it. Members designated to contact representatives of defaulting States parties should be selected on a very pragmatic basis, high priority being given to their willingness to do so.

49. Mr. FERRERO COSTA supported the proposal of the Bureau that members of the Committee should be designated to contact representatives of defaulting States parties. Some reports were, however, more overdue than others and it would not be possible to discuss all the outstanding reports in 1991. He suggested that the Committee should first contact those States whose reports had been overdue since 1986; those were 44 in number. Reports overdue since 1987 could be considered at a later session.

50. He agreed with the proposal that members should be selected on a geographical basis, as such members would have the advantages of physical proximity and familiarity with the region. If the geographical criterion did not work out in practice, another approach, such as that suggested by Mr. Wolfrum, might be tried. He inquired whether the Committee would appoint members or whether volunteers would be called for.

51. Mr. de GOUTTES said it was essential that the Committee should decide on appropriate guidelines. First priority should be given to determining which States parties were the most overdue. The proposals made by Mr. Wolfrum and Mr. Ferrero Costa were also acceptable. It would be important to establish a harmonized model for approaches to overdue States. It would not be appropriate for each member to take a personal decision as to how to make such an approach. The Committee might, for example, consider developing a model letter to be addressed by the member to the State concerned, but it would be essential to use the same model in all cases.

52. Mr. VIDAS stressed the importance of flexibility. All possible approaches should be explored. The Committee should be open-minded but should not adopt a technical approach. The issue was complex. In addition to designating Committee members to contact defaulting States parties, the Committee might consider other possible approaches. The majority of the States parties whose reports were overdue were African and Latin American, but 12 European States were also overdue by more than two years. He had been informed that, in July 1990, the European Parliament had considered a report on racism and xenophobia in the European Community and the recommendations of that report closely paralleled the work of the Committee. Consideration might therefore be given to inviting the European Parliament to send representatives to attend the Committee's summer session to discuss the question of the 12 European States which had not submitted reports. Similar action could be taken through the Organization of African Unity and the Organization of American States for countries in their areas. Through those regional organizations, technical assistance to Governments might be coordinated and organized. Many of the African countries which had not submitted reports were not technically in a position to do so. The Committee should also take account of the activities to combat xenophobia pursued in other agencies.

53. Mr. LAMPTEY agreed with the proposal that members should be designated to meet representatives of overdue States parties. As a first step, the Secretariat should provide the Committee with a list of States parties which, because of the number of their defaults, must be contacted. Such contacts must be on a voluntary basis only and should not be in a regional framework. It did not follow that regional members had particularly good regional contacts. Once the country to be approached had been identified, members could be asked to volunteer on the basis of their own contacts and experience with that country.

54. He could not support the proposal by Mr. Vidas regarding the European Parliament and other agencies. Such a step would be dangerous. The particular character of the Committee must always be borne in mind; it was a treaty body, acting under strict limitations. Contacts with bodies such as the European Parliament would be of a two-way nature and, if the Committee were to use the European Parliament to exert pressure on the particular issue of racism, the European Parliament could approach the Committee for reciprocal treatment. The Committee was not a political body and should not become involved in political actions.

55. The Committee itself had a direct influence on States parties by virtue of the fact that such States had acceded to the Convention. He could not agree to a meeting even with the Organization of African Unity. The Committee must restrict itself to its terms of reference. It was under an obligation to bring delays in the submission of reports to the attention of the General Assembly, whose duty it was to call defaulting States to order. As individuals, members had contacts with individuals in States parties and through them could perhaps influence State action. The approach need not, however, be the same in every case. Letters would serve no useful purpose. The Committee should leave it to those volunteering to make contact with the State party concerned to decide how they should approach the task.

56. Mr. WOLFRUM said that document CERD/C/212 (on pages 3 to 7) contained a list of States whose reports had been overdue since the period 1976 to 1986. Those States should be approached by members of the Committee on a voluntary basis in the first instance. He could not accept the proposal by Mr. Vidas. Neither the European Parliament nor the Council of Europe could speak on behalf of member States and the Committee should not in any case use intermediaries. It would be better to follow the course of action proposed by the Bureau.

57. Mr. VIDAS said that his reference had been to the European Parliament, which was a political body but not in the same way as the Council of Europe. In his view, the Committee should examine whether its proposals were in compliance with the Convention and, in that connection, should take account of the report of the third meeting of persons chairing the human rights treaty bodies (A/45/636).

58. It was important to see what was going on outside the Committee's own experience. The Committee's task was to combat racism and racial discrimination; it was master of its own rules and should explore all possibilities it might deem appropriate. One such possibility would be

dialogue with new institutions such as the European Parliament, whose report and recommendations might well be of relevance in advancing the provisions of the Convention.

59. Mr. LAMPTEY said that the European Parliament was a political body and it was wrong to say that anything not specifically prohibited under the Convention was permissible. The Committee was bound by its practice and rules of procedure, and over the years it had not accepted the use of certain types of material. The Committee's duty was to ensure that States fulfilled their obligations and it must limit its activities accordingly. Mr. Vidas' proposals were not practicable.

The meeting rose at 1.10 p.m.

CERD/C/SR.891
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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Thirty-ninth session

SUMMARY RECORD OF THE 891st MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 5 March 1991, at 3 p.m.

Chairman: Mr. SHAHI

CONTENTS

Submission of reports by States parties under article 9, paragraph 1, of the Convention (*continued*)

The meeting was called to order at 3.10 p.m.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 9, PARAGRAPH 1, OF THE CONVENTION (agenda item 3) (continued) (CERD/C/212; HRI/1991/1; A/45/636; CERD/C/70/Rev.1)

1. The CHAIRMAN said the Bureau had recommended that the Committee should consider the following questions under item 3: (i) designation of members of the Committee to contact representatives of defaulting States parties; (ii) model report suggested by Mr. Banton and consolidated guidelines; (iii) technical assistance; (iv) report of the Committee to the General Assembly (improvement of style and content).

Designation of members of the Committee to contact representatives of defaulting States parties

2. With regard to the first question, the CHAIRMAN recalled that a consensus had already been reached on the designation of Committee members for that purpose. After informal consultations, the members listed below had volunteered to make contact with the representatives of the following States: Mr. Lechuga Hevia: Bahamas and Guyana; Mr. de Gouttes: Côte d'Ivoire and Zaire; Mr. Wolfrum: Belgium, Bulgaria and Cape Verde; Mrs. Sadiq Ali: Botswana, Viet Nam and Zambia; Mr. Ferrero Costa: Bolivia and Peru; Mr. Vidas: Greece and Tunisia.

3. Mr. YUTZIS requested a little more time before indicating the countries whose representatives he might contact.

4. Mr. de GOUTTES noted that the list was only tentative for the time being and would have to be completed; moreover, the method of contacting representatives of States parties required further discussion.

5. Mr. RESHETOV thought that it was preferable for a State party to be contacted by a Committee member from that country whenever possible. It would therefore be better for Mr. Garvalov, who was currently absent, to contact Bulgaria.

6. The CHAIRMAN confirmed that the list was not final and that other members could still volunteer. It would be a good idea, for instance, to wait for Mr. Garvalov, as Mr. Reshetov had suggested.

7. Mrs. SADIQ ALI said that it would be useful for the members of the Committee to have a letter or at least a memorandum when establishing contact with representatives of the States parties so as to provide the latter with a basis for approaching their Governments.

8. Mr. de GOUTTES supported that request, adding that different approaches by the members of the Committee should be avoided.

9. Mr. LAMPTEY said that the Committee members should not all adopt a standard approach and that in some cases oral contacts were preferable. He personally could speak to ambassadors of States parties in Rome.

10. Mr. LECHUGA HEVIA said that he, like other members of the Committee, thought it necessary to show the representatives of the States parties proof of some sort of mandate.

11. The CHAIRMAN informed the Committee that funds were available for personal contacts. He proposed, as was the wish of several members, that a memorandum should be drafted in collaboration with the Secretariat as a basis for contacts with the representatives of the States parties.

It was so decided.

12. Mr. VIDAS said that he wished, for the benefit of Mr. Lamptey, to clarify a point he had made at the previous meeting about contacts with the European Parliament. The intention was not to involve the European Parliament in the work of the Committee, but to use all possible means to ensure the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination. His proposal was to be seen in the context of changes in race relations in recent years and of the need, recognized by the Committee, to obtain information from sources other than Governments.

Model report suggested by Mr. Banton and consolidated guidelines

13. The CHAIRMAN drew attention to Mr. Banton's suggestion concerning a model report, contained in a document without a symbol which had been circulated to the members of the Committee. He recalled furthermore that consolidated guidelines for the initial part of the reports of States parties had been drawn up in consultation with all the human rights treaty bodies, as stated in paragraph 65 of the note by the Secretary-General (A/45/636). The text of the consolidated guidelines was contained in document HRI/1991/1. The new guidelines must now be brought into line with the Committee's own revised general guidelines (CERD/C/70/Rev.1).

14. Mr. BANTON specified that his intention in the text he had submitted had been to propose a model report to all States parties. In drafting the model he had been thinking in particular of States with reporting difficulties. It was also necessary to eliminate a certain amount of peripheral information which, though perhaps interesting *per se*, had the effect of distracting attention from central issues.

15. Mr. HOUSHMAND (Representative of the Secretary-General) said that it was for the Committee to decide whether it intended first to incorporate the consolidated guidelines to which the Chairman had just referred (HRI/1991/1) as Part I ("General") of the revised general guidelines concerning the form and contents of reports, adopted by the Committee at its twenty-first session (CERD/C/70/Rev.1), and then whether or not to delete the existing Part I.

16. Mr. VIDAS said he considered that the revised general guidelines in document CERD/C/70/Rev.1 and the consolidated guidelines in document HRI/1991/1 were in fact complementary. On the subject of the model report proposed by Mr. Banton, he would like Governments to include in their reports an assessment of the situation in their countries, in addition to describing their policy to combat racial discrimination. The fact was that in some countries there were clearly problems that went deeper than what was

stated in their reports. By and large, he thought that Mr. Banton's suggestion was a useful one and that his model might be helpful to many Governments.

17. Mr. LAMPTEY considered that the consolidated guidelines for the initial part of the reports of States parties (HRI/1991/1) should become Part I of the revised general guidelines ("General") in document CERD/C/70/Rev.1. What was now Part I of the revised general guidelines should be transferred in full to Part II. As to Mr. Banton's model report, it should do no more than supplement the Committee's revised general guidelines. It was very useful, but some parts were perhaps over-simplified, if not for initial reports, at least as far as subsequent reports were concerned.

18. Mr. BANTON said that the model report might be submitted to the representatives of States parties who would be presenting reports at the Committee's forthcoming meetings so as to hear the views of those concerned.

19. Mr. WOLFRUM said that while he, too, thought Mr. Banton's text was very useful, he had a reservation to make concerning paragraph 12, which related to article 4 of the Convention. The paragraph seemed to depart from the wording of subparagraph (a) of that article, while no mention was made of subparagraph (b).

20. Mr. SONG Shuhua reminded the Committee that it had already discussed the question of the preparation of reports two or three years previously, and should therefore take account of the conclusions it had drawn at the time. He also wondered whether the guidelines to which Mr. Martenson had referred the day before had any connection with the matter under discussion.

21. The CHAIRMAN asked Mr. Song Shuhua to specify which part of Mr. Martenson's statement he had in mind.

22. Mr. SONG Shuhua said that Mr. Martenson had spoken about a reporting manual comprising a chapter entitled "General". He wondered whether that chapter might have some connection with the general guidelines adopted by the Committee.

23. Mr. HOUSHMAND (Representative of the Secretary-General) said that the manual did include a general part relating to the consolidated guidelines as well as a chapter devoted to the International Convention on the Elimination of All Forms of Racial Discrimination. The document, which had gone to press, would be provided to the Committee members as soon as it was available.

24. Mr. LAMPTEY proposed that consideration of Mr. Banton's model report should be suspended until the Committee members had received the manual in question.

25. The CHAIRMAN said that he shared Mr. Lamptey's view. With regard to harmonizing the revised general guidelines (CERD/C/70/Rev.1) with the consolidated guidelines (HRI/1991/1), he proposed that the Committee should await the outcome of the work of the group composed of Mr. Banton, Mr. Lamptey, Mrs. Sadiq Ali and Mr. Vidas.

Technical assistance

26. On the question of technical assistance, the CHAIRMAN drew Committee members' attention to paragraphs 34-36 of document A/45/636, which dealt with that subject.

27. Mr. de GOUTTES informed the Committee that a seminar on human rights instruments was to be held the following week in San Remo, for the French-speaking African countries. He would be making a statement about the Committee on that occasion.

28. Mr. FERRERO COSTA asked the representative of the Secretary-General if it would be financially feasible to provide for the sending of experts from the Secretariat or from the Centre for Human Rights to certain countries situated in the same region in order to help them, at their request, to draft their reports.

29. Mr. HOUSHMAND (Representative of the Secretary-General) reminded the Committee that it was with financial resources from the Voluntary Fund for Advisory Services and Technical Assistance in the Field of Human Rights and, to a lesser extent, from the United Nations regular budget that the Centre organized training activities for human rights officials, especially those in charge of preparing reports. As had been affirmed by the General Assembly, the Commission on Human Rights and the persons chairing the human rights treaty bodies, it was for the treaty bodies to make suggestions to the Secretary-General as to the type of training programme they deemed most appropriate. Any proposals the Committee wished to formulate in that connection would therefore be very helpful.

30. Mr. FERRERO COSTA suggested that, with resources from the Voluntary Fund, a special team of experts from the Centre for Human Rights might be constituted to provide local assistance to defaulting countries in preparing their reports.

31. Mr. LAMPTEY said that the proposal was an interesting one and that the Committee should give it further thought.

32. Mr. de GOUTTES supported Mr. Ferrero Costa's suggestion and suggested that members of the Committee might be part of the special team.

33. Mr. RESHETOV thought that Mr. Ferrero Costa's idea was very interesting but that considerable thought should be given to its implementation in practice with the help of the Secretariat, which had a great deal of experience in that area. The specific situation of each country should also be taken into account.

34. Mr. YUTZIS said that, as he understood it, the Committee agreed in principle to Mr. Ferrero Costa's idea and would later discuss ways of putting it into effect. He therefore proposed that for the time being the Committee members should make suggestions, to be noted by the Chairman, and that they should determine the exact procedure for the practical application of that idea at a later stage.

35. Mr. WOLFRUM said that he, too, had the impression that there was no objection in the Committee to the establishment of a special team of that kind and that the team would go only to countries that so requested. He thought that the team should be established within the framework of the Centre for Human Rights in Geneva and that it should include members of the Committee.

36. Mr. HOUSHMAND (Representative of the Secretary-General) said that the Centre for Human Rights would give careful consideration to Mr. Ferrero Costa's proposal and specified that the Centre conducted training activities in a given country only at the request of the country concerned. If the Committee endorsed Mr. Ferrero Costa's proposal, it would be included in the Committee's report to the General Assembly and the States parties wishing to receive such assistance could apply for it.

37. Mr. RHENAN SEGURA said he would like the Secretariat to inform the Committee of its experience with other bodies with similar problems.

38. Mr. YUTZIS said that the Committee should not put the cart before the horse. For the time being, its task was to devise a model, whereas it appeared that the Committee was already beginning to contemplate difficulties in applying it. States were not always willing to acknowledge openly the difficulties they encountered. The Committee should therefore encourage States needing assistance to request it.

39. Mr. FERRERO COSTA endorsed Mr. Yutzis' comments, noting that none of the members of the Committee had objected in principle to his proposal. With regard to ways and means of putting it into effect, the Secretariat might make proposals. The Committee members might also propose a tentative procedure to be considered at a future Committee session. At the current session, the Committee might therefore approve the proposal in principle, in general terms. Consideration of the necessary follow-up procedures would be placed on the agenda of a future session. However, if the Committee wished to decide on both the principle and the implementation procedures immediately, so much the better.

40. The CHAIRMAN drew the Committee's attention to paragraph 73 of the report of the third meeting of persons chairing the human rights treaty bodies (A/45/636). It was with reference to that paragraph that Mr. Ferrero Costa had proposed the establishment, within the Centre for Human Rights, of a special team to assist countries in drafting their reports, at their request. The idea had been accepted by the Committee, but the implementation procedures remained to be determined. The General Assembly had already endorsed the report concerned. Mr. Ferrero Costa, Mr. Lamptey and Mr. Wolfrum could therefore hold informal consultations and submit their recommendations to the Committee in a few days' time.

41. Mr. RHENAN SEGURA recalled his earlier proposal that the Centre for Human Rights should inform the Committee of the experience it had gained, including the difficulties encountered in the field, in the countries in which it had organized courses or contributed to the preparation of reports, for example.

42. The CHAIRMAN said that the small group of three Committee members whose establishment he had just suggested might consult the representative of the Secretary-General on that subject and reflect the information provided by the Centre for Human Rights in its recommendations to the Committee.

The meeting was suspended at 4.35 p.m. and resumed at 4.55 p.m.

Report of the Committee to the General Assembly (improvement of style and content)

43. Mrs. SADIQ ALI said she wished to know exactly what was meant by "improvement of style and content". In her opinion, the Committee's most recent report was a distinct improvement on previous reports, and was, in fact, of very high quality.

44. Mr. VIDAS said he felt that there was room for improvement in several respects. First of all, the only official documents of the Committee were its report to the General Assembly and the summary records of its meetings. An examination of the 1990 report (A/45/18) showed that some 60 of its 100 pages were devoted to the consideration of States party reports, which was excessive. Without going so far as to say that the Committee did little more in those 60 pages than to repeat what was already in the summary records, he believed that a more concise presentation would be possible.

45. Moreover, the report gave no analytical assessment of the situation prevailing in any part of the world in regard to racial discrimination. All it contained was a summary, varying in length, of the reports of States parties and an account of the way in which certain agenda items had been considered. He would like the Committee to include in its report to the General Assembly its own assessment of the situation, arrived at after having examined some 20 reports of States parties - given, of course, that that proved possible, in other words that the Committee members succeeded in reaching agreement. That assessment could be included either in the report itself or in the covering letter addressed by the Chairman of the Committee to the Secretary-General together with the Committee's report. Such an assessment would enhance the value of the Committee's work, would convey to the General Assembly the Committee's view of the general situation regarding racial discrimination and might, finally, be used by the General Assembly as a starting-point for any action that might be deemed necessary or desirable.

46. The presentation of the report also needed to be improved. Everything to do with substantive issues discussed by the Committee should be combined in one section, as should all the annexes attached for information. Organizational matters could be kept together in a single section instead of some of them being at the beginning and others at the end of the report, as was now the case.

47. There might be some conjecture about the usefulness of the report in its present form. The fact was that the representatives of a State party were unlikely to read what the Committee's report said about other States parties. They would be more likely to look at what was said about their own country, which was already contained in the summary records. The report would be far more useful if the elements needed for an assessment of the situation were

grouped together. The Committee should endeavour to make its report to the General Assembly more functional so as to enable the General Assembly to draw on the work done by the Committee and any conclusions it had reached.

48. Mr. WOLFRUM regretted that he could not endorse Mr. Vidas' views. Of course, the report of the Committee to the General Assembly should be streamlined somewhat and made more readable. It was also true that the Committee often repeated in its report what was to be found in the summary records. However, the latter were structured according to the statements made by Committee members and did not therefore adequately reflect the prevailing situation in a particular country. They supplemented the report but could never replace it. The report must be a condensed version of the Committee's deliberations. For each State party's report, it must therefore include, firstly, the oral presentation of the report by the representative of the State party; secondly, the presentation by the rapporteur appointed to examine the situation in that country; thirdly, statements by other members of the Committee - and it was that part that could best be condensed, as members' statements could be covered thematically; fourthly, the replies of the State party's representative, if he or she was present; and, fifthly, the conclusions reached by the Committee after the final exchange of views in the absence of the representative of the State party.

49. Unlike Mr. Vidas, who wanted the Committee to make an evaluation of the world situation in regard to racial discrimination, he thought that the Committee should make an assessment of the information it had received, after its consideration of each report and possibly at the end of each session. That would make its report both interesting and informative.

50. Finally, consideration could be given to drafting a one- or two-page summary of the whole report. It would certainly be useful, although he was aware of the technical difficulties involved, particularly the amount of work and hence the cost it would entail. Still, the idea was worth exploring.

51. Mr. LAMPTEY said that, although he had no basic objection to trying to improve the Committee's report, he had never considered it difficult to read; nor did he think that it was too long, given the amount of documentation that the Committee sometimes received from States parties. The report was intended for those who were genuinely interested in the work of the Committee and should be read by them in conjunction with the summary records. As Mr. Wolfrum had just said, the report must reflect, in summary form, the discussions which had taken place in the Committee. No other structure was possible.

52. He recalled that the Committee had originally included in its reports value judgements of the kind provided for in the model proposed by Mr. Banton, but had had to abandon that practice because it had proved very difficult and time-consuming to agree on a common position. Any attempt to reintroduce such value judgements or assessments would come up against the same difficulties. He did not object in principle, but doubted that the Committee would succeed, for want of time.

53. Mr. YUTZIS stressed the importance of the ongoing discussion, which brought several factors into play. Firstly, from an epistemological point of

view, the suggestion that the report must reflect the Committee's work and discussions must be clarified - did it mean that it would represent the facts in the manner of a medieval narrative painting (with all the details) or in an impressionistic manner (rendering the atmosphere of the discussion)? In the second instance, it went without saying that everyone would want to see a reflection of his or her version of what had happened, but there might be other possible interpretations.

54. Secondly, from an axiological standpoint, in other words from the point of view of values, it had frequently been said in the Committee - both by Committee members and by representatives of States parties - that the Committee was not a tribunal and did not hand down sentences. That did not mean, however, that the Committee did not make value judgements. A common denominator must therefore be found among the views that each Committee member wanted to see in the Committee's report to the General Assembly, concerning the States parties' reports that had been considered or the general situation regarding racial discrimination in those countries. Once the common denominator had been found, should the Committee spell it out in its report or leave it implicit? It was for the Committee to decide. Until now, the Committee's value judgement had been implicit, but it should not necessarily remain so.

55. Thirdly, until now the Committee had not tackled the question of assessing the general world situation regarding racial discrimination. It was, however, its duty to do so under article 9, paragraph 2, of the International Convention on the Elimination of All Forms of Racial Discrimination. It did not seem an impossible task and the Committee should not shirk it.

56. The structure of the Committee's report to the General Assembly was dictated by its content. For each State party report considered, the Committee's report to the General Assembly should cover the oral presentation made by the representative of the State party, the presentation by the rapporteur responsible for that report, the replies by the State party and any other questions and answers, and, lastly, it should include a general assessment by the Committee of the situation regarding racial discrimination in the country under consideration. That general assessment would constitute the Commission's conclusion on the situation prevailing in that country in the field covered by the Convention. In his view, it would be better for the Committee to make such an assessment itself rather than let others do it.

57. Mr. FERRERO COSTA, endorsing the proposals made by Mr. Vidas, Mr. Wolfrum and Mr. Yutzis, said that it would be useful, in the section of the report concerning consideration of States parties' reports and after the oral presentation of the report by the State party, the views of the rapporteur responsible for the report in question, the questions asked by the Committee and the replies by the State party, to add a final section containing an assessment by the Committee of the situation in the country concerned.

58. He also stressed the need to report on the Committee's debates on States parties' reports in the order in which the deliberations had proceeded; in other words, the report of the country rapporteur must follow the introductory statement by the State party.

59. On the question of the length of the report, he thought that it would be a mistake to abridge it any further. All that would be needed would be to add a final section entitled either "Assessment", "General comments" or "Recommendations", for example. As to whether the assessment should cover the situation regarding racial discrimination in the world, the Committee could not expect to make an analysis of that kind at a two-hour meeting without having the necessary background information.

60. He agreed with Mr. Wolfrum's proposal that a brief two- or three-page summary of the main points in the report should be included at the beginning of the report or within the body of the covering letter sent by the Chairman of the Committee to the Secretary-General of the United Nations. Specialists or those who wished to know more could refer to the full text of the Committee's report.

61. Finally, without denying the merits of what had been done in the past, he thought that the preparation of the Committee's reports could be improved.

62. Mr. de GOUTTES said that the Committee's report should take into account three essential considerations, namely, it should offer a guarantee to States parties by faithfully reflecting the Committee's discussions; it should help the General Assembly to grasp the essential points of the Committee's deliberations, by inserting a passage on the presentation of States parties' reports by the respective rapporteurs, by summarizing the questions raised by Committee members, and by giving a sort of conclusion on the main points of each State party report as would emerge from the final discussion among Committee members in the absence of the delegation of the State party concerned; and it should refrain from making radical changes in the process. On the latter point, he had misgivings about the advisability of presenting the General Assembly with a summary that might not accurately reflect either the content of States parties' reports or their wishes.

63. Furthermore, the Committee should refrain from undertaking reforms which had not been expressly requested by the General Assembly.

64. Lastly, it would be very helpful for the Committee to be informed of what the General Assembly thought of the quality of its report.

65. Mr. LAMPTEY observed that the General Assembly's conclusions concerning the Committee's report were contained in the report of the Third Committee, whose views were, moreover, duly reflected in the summary records of its meetings.

66. He did not think that the Committee was in a position to assess the situation regarding racial discrimination in the world, since States parties' reports did not give a full picture of the actual situation in those countries. The Committee should not delude itself or mislead the General Assembly. Moreover, the Committee did not have the necessary resources to make an assessment of that kind.

67. Finally, he was of the view that the report, as it stood, accurately reflected the Committee's work, and any attempt, as Mr. Yutzis had suggested, to render the atmosphere of the discussions would create difficulties that would only make the adoption of the report even more arduous.

68. Mr. BANTON noted that no one had so far mentioned the report's significance for dialogue between the members of the Committee and the States parties. For instance, the country rapporteurs had most usefully referred back to previous reports to see what questions had been asked in the past and whether the State party concerned had provided an adequate response.

69. In the part of the report dealing with the consideration of States parties' reports, the comments of each country rapporteur should be grouped together with those made by other members of the Committee, following the numerical order of the articles of the Convention. Such a procedure would depart from the method used in drafting the summary records, which consisted in reporting speakers' comments in chronological order, but it would have the merit of greater clarity.

70. It would, moreover, be a good idea for the Committee to continue to make value judgements, exercising restraint as it always had done.

71. Finally, he agreed that, in its present form, the Committee's report did not lend itself to dissemination among the general public. Quite a different approach should be adopted if it was to be widely circulated, reporting not on the Committee's work in a given year, but its work on a particular subject. It would, however, be difficult to reach agreement on that point.

72. Mr. SONG Shuhua said that only strictly necessary changes should be made to the report. The Committee might perhaps fill out its report by indicating the progress it had made.

73. Well-structured reports of States parties would provide a more solid foundation for the Committee's report.

74. Mrs. SADIQ ALI doubted that the Committee could reach agreement on the question of assessing States parties' reports, given the diverging views expressed when the reports were considered.

75. Mr. WOLFRUM disagreed with Mr. Banton's assertion that the Committee, when making its assessment, should not depart too much from previous practice. On the contrary, it should not hesitate to do so, as seemed to be the consensus among Committee members.

76. Mr. YUTZIS reminded the Committee that article 9, paragraph 2, of the Convention stipulated that "The Committee shall report annually" and not "the members of the Committee shall report ...". That semantic distinction warranted reflection, since the proposals made might lead the Committee off in a direction that was contrary to that provision.

77. The CHAIRMAN, summing up the discussion, said that the Committee members seemed to agree on what the section of the report concerning the consideration of States parties' reports should contain, namely, an account of the oral

presentation by the State party representative, the questions and comments of the rapporteur concerned, the questions asked by other members of the Committee (which might be presented analytically so as to avoid duplication) and the replies by the State party, as well as an assessment of the report and of the comments by the State party concerning the situation regarding racial discrimination in the country in question.

78. According to one expert, the Committee had, in the past, made implicit rather than explicit value judgements. It was true that the Committee might be more outspoken, but diplomacy was called for so as not to give offence to States parties.

79. He agreed with Mrs. Sadiq Ali that it was sometimes difficult for the Committee to give a clear-cut opinion on the reports of States parties for want of consensus among members.

The meeting rose at 6.10 p.m.

CERD/C/SR.892
8 March 1991

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Thirty-ninth session

SUMMARY RECORD OF THE 892nd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 6 March 1991, at 10 a.m.

Chairman: Mr. VIDAS

CONTENTS

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

Tenth periodic report of Argentina

The meeting was called to order at 10.25 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)*

Tenth periodic report of Argentina (CERD/C/172/Add.18)

At the invitation of the Chairman, Mr. Lanus, Mr. Saravia, Mr. Paz and Mr. Majoral (Argentina) took seats at the Committee table.

1. Mr. LANUS (Argentina) said that, as the Committee would be aware, Argentina had a long-standing republican tradition, under which equality of opportunity was regarded as the corner-stone of every aspect of public life. article 16 of the Argentine Constitution stated that the Argentine Nation did not recognize privileges based on race or birth. All its inhabitants were equal before the law, and had equal access to employment, aptitude being the sole criterion. The principle of equality was also the basis of taxation and of access to public office. It guaranteed equal treatment for all citizens, regardless of race or origin, and left no room for discrimination. Argentina took pride in its indigenous roots and regarded indigenous culture as an essential element of its nationhood. Many of its artistic achievements, its music and poetry as well as its language, were the products of that culture.

2. The next national census, which was to be held on 14 May 1991, would make it possible to make an accurate estimate of the numbers of indigenous inhabitants, leaving no room for doubts or misunderstandings. It was the Government's intention to act with transparency and to deal with problems with the maximum objectivity.

3. Before taking up specific questions relating to the indigenous population, he wished to make a few comments on the country's general situation. As the Committee would be aware, the majority of Latin American countries were now undergoing a severe economic crisis, and the Argentine Republic was no exception; it was in fact among those which had been most affected. The population was suffering from a serious deterioration in living standards, a problem which the Government hoped shortly to overcome. That situation should be viewed in the overall context of current international economic relations - increasing protectionism on the part of many developed countries, foreign debt, and falls in commodity prices to a level of one half of what they had been 20 years earlier. Although he did not wish to make that situation an excuse, he would ask the international community to take it into account and to show some understanding of his country's problems. Unfortunately, in times of crisis, it was always the least advantaged who were the hardest hit. The situation meant that, for the present, the Government was unable to meet the just demands of all its citizens or to give full effect to the principle of equality of opportunity.

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* Resumed from the 890th meeting.

4. Where legislation was concerned, his Government unreservedly supported the struggle to achieve equality for all without distinction, as it had affirmed before all the various United Nations bodies. Argentina had co-sponsored a number of important General Assembly resolutions on the subject, for example, resolution 43/95 of 1988 on the status of the International Convention on the Elimination of All Forms of Racial Discrimination, and the corresponding resolution 45/89 of 1990. It had also consistently rejected the segregationist regime in South Africa, as was evidenced by its refusal to trade with that country until it put an end once and for all to the odious system of apartheid, granted every South African citizen the same civil and political rights, and allowed enjoyment by all of economic, social and cultural rights. Argentina had also strongly denounced the various forms of discrimination practised against Palestinian workers in the Israeli-occupied territories and had joined in condemning violations of the human rights of minorities, notably the Kurds.

5. Under his Government's policy on the indigenous population, top priority was given to promoting indigenous interests, within the limits imposed by the country's current situation. Existing legislation included Act No. 23,302 on Indigenous Policy and Assistance to Indigenous Communities, which had been referred to in an earlier report: that Act had set up a National Institute for Indigenous Affairs.

6. The policy adopted in 1989 had defined a number of objectives in the socio-economic, health and cultural fields. Its aim was to introduce long-, medium- and short-term programmes to foster the development of indigenous communities by means of land grants, promotion of agriculture, fisheries, forestry, mining, industry and handicrafts, and support for trade, both domestic and foreign.

7. In the field of health, his Government's approach was based on the assumption that health was not merely the absence of disease, but a state of physical, mental and social well-being, in which environment and nutrition played an essential role. It had set up disease prevention and health assistance programmes for the indigenous communities, which included the teaching of traditional medicine, and gave priority attention to child health.

8. In the cultural sphere, his country's authorities, with a view to ensuring that indigenous peoples played a leading part in their own development and that socio-economic advance did not adversely affect cultural identity, were introducing bilingual education programmes, giving priority to literacy. Housing plans were being developed which would respect the *modus vivendi* of the indigenous community and at the same time improve its situation, both individually and on a communal basis. Plans for the surveying, allocation and (where appropriate) development of land had also been initiated. A registry of indigenous communities had been formed and a National Institute for Indigenous Affairs set up, advised by a coordination council, on which indigenous communities would be represented. Existing legislation affecting indigenous communities had been publicized, and members of those communities were entitled to propose amendments to it in order to ensure that their customs were respected.

9. An example of such legislation was Act No. 2627/89 promulgated by the Province of Misiones, in which one of the largest indigenous communities, the Guaranis, lived. The Act was designed to respect the cultural and spiritual values and the way of life of the Guaranis. It made provision for land ownership and encouraged productive activity, while preserving existing cultural patterns. It also offered the Guaranis the opportunity of entering their names on a special register.

10. A Provincial Office for Guarani Affairs was to be set up; it would be a decentralized administrative body with authority to take decisions and sign contracts for the implementation of overall development plans for the indigenous communities. For legal purposes, and in the case of possible appeals, its decisions would be subject to the authority of the provincial government.

11. The Office would be advised by a consultative body composed of representatives of both the Guarani communities and bodies engaged in development projects on behalf of those communities. Its function would be to transmit to the authorities the communities' wishes or concerns. Membership would be honorary, and only management costs would be met by the Government. The system would provide for grants of land to any indigenous communities which had registered as such, totally free of charge.

12. The Provincial Office for Guarani Affairs and the Land and Settlement Office would be working together with representatives of the Guarani community to select the land in question and to initiate plans for land distribution. Existing settlements would be respected once the wish of the indigenous communities to settle permanently in the area had been confirmed. Such land allocations would, of course, be carried out in full accordance with legal requirements. Any land so allocated could not be subject to distraint; nor could it be sold, given away, annexed or made liable for taxation of any kind.

13. Education was considered one of the main means of protecting the interests of the indigenous community. The Provincial Office for Guarani Affairs, in conjunction with national and provincial authorities, was putting into effect a special plan for primary, secondary and higher education. Such education would, of course, be bilingual, and would preserve the spiritual and cultural values of the Guarani population.

14. Under an overall health plan, members of the indigenous community were to be given training in nursing skills. The cost of medicines would be met by the Provincial Office for Guarani Affairs. Where housing was concerned, 1 per cent of the assets of the Provincial Institute for Lotteries and Casinos would be set aside for the implementation of housing projects. In addition, the Provincial Office would be entitled to include in the provincial budget any further allocations which might be found necessary for the purpose.

15. As he had indicated, his Government was determined, as part of its policy of social justice, to preserve the historic and cultural asset which Argentina's indigenous communities represented. In that connection, he expressed his Government's satisfaction that 1993 had been proclaimed International Indigenous Year. Argentinians had always referred to their country as "a melting-pot of races", and the indigenous peoples had been a

part of the country since the beginning of its existence as a nation. As had been pointed out by the Argentinian writer Manuel Galves, "All old Argentinians have in them something of the Indian".

16. Mr. de GOUTTES, country rapporteur, said he would like to commend the Government of Argentina for the effort it had made to strengthen the democratic process initiated in 1983, following the dark days of the military dictatorship, in adopting legislation to guarantee human rights and introducing a programme to promote cultural freedom and national identity. He also paid tribute to Argentina for having fulfilled its obligations in regard to periodicity. The current report was the tenth to come before the Committee, after nine previous reports; such regularity deserved commendation, particularly since it was not often emulated by other member States.

17. The Argentine Government had also complied with the Committee's guidelines as to form and content. However, some of the information given was inadequate or unclear, and there were a number of points which gave rise to questions. Despite those shortcomings, he would emphasize that the report was a good one. As always, it was the good reports that prompted questions and discussion, whereas the bad reports were greeted merely with silence and consternation.

18. The first, general, section of the report provided interesting information on international human rights instruments ratified by Argentina and on domestic legislation designed to guarantee enjoyment of human rights. Two Acts were particularly significant, Act No. 23,592 of August 1988 relating to punishment of discriminatory acts perpetrated on the grounds of race, sex, religion or nationality, and Act No. 23,302 on Indigenous Policy and Assistance to Indigenous Communities, which appeared to be still under review. Paragraph 8 of the report gave a number of examples of measures taken by the city of Buenos Aires and by the Province of Cordoba to safeguard human rights. He would also like to know what was the situation in other provinces, which did not have the benefit of such measures.

19. While he appreciated the information just given by the Argentine representative on the new Act No. 2627/89 on protection of the Guarani community in the Province of Misiones, information on the situation in other provinces would also be useful. Similarly, in paragraph 9, more recent information would have been helpful on Act No. 23,302, which had been amended following consultations with the indigenous communities. It would be interesting to know what were the divergencies of view which had led to such amendments. Might not postponement of adoption mean that the Act was to some extent paralysed, and would not the indigenous populations suffer as a result of the delay?

20. With regard to the Under-Secretariat for Human Rights in the International Sector, would the setting up of a new Ministry of Justice, recently announced by the President, affect government machinery responsible for implementing human rights policy?

21. He felt bound to point out that the demographic estimates given in paragraphs 16-18 were based on outdated and sometimes incomplete information. For example, the population distribution by province was based on a census

of 1980 and was broken down only by sex, density and urban or rural area. It would have been more useful to have had information on more recent population changes in the outlying areas of major cities, in view of the fact that there had been large migrations of indigenous inhabitants from the country to the towns. In addition, the population tables gave only approximate figures, based on a 1968 estimate, without taking into account the inhabitants of the South Atlantic Islands. As the report itself stated, a new census was essential to give a more scientific and accurate picture of the demographic situation in the country. He was glad to hear that a new census was planned and hoped that its findings would be included in the next report.

22. The general section of the report would have been more useful if it had provided more recent information on the current economic, social and political situation in the country and on problems encountered, in accordance with the new, unified guidelines drawn up by the recent Meeting of chairpersons of human rights treaty bodies. For example, information could have been provided on the effects of the economic crisis on GNP and GDP per inhabitant and on purchasing power. Figures for the unemployed and underemployed could also have been given.

23. It would have been useful to have more information on rates of migration of the rural population to the towns and on any resulting tensions in the shanty towns surrounding large cities. Had any measures been taken to help the inhabitants of shanty towns, many of whom were indigenous? Information on strikes would also have been of interest.

24. The report had drawn attention to the difficulties arising from Argentina's federal system of government. Although perhaps outside the strict framework of the Convention, it would have been useful to know more about the political structure of the country and about any major political events with a social impact, such as the military rebellion of December 1990 and the subsequent amnesty granted to a number of generals of the former dictatorship.

25. Some information would also have been helpful on aid given by the Government to human rights groups working in the cause of the "disappeared", particularly disappeared children. There were a number of non-governmental organizations concerned with that aspect of human rights, which had relevance to the recent Convention on the Rights of the Child. The Under-Secretary-General for Human Rights had urged the Committee to look into that question at its current session.

26. He would also have appreciated information on reports by certain human rights bodies, such as Amnesty International, alleging discrimination in the courts against certain members of left-wing organizations, such as the Movimiento Todos por la Patria (MTP) and Frente de Resistencia Popular (FRP), who had been implicated in the attack on La Tablada barracks in Buenos Aires in 1989. Although such matters did not fall strictly within the scope of the Convention, they were of interest as part of the general background against which the Convention was being implemented. He noted from paragraph 55 of the report that a recent Act penalized discriminatory acts or omissions on grounds such as political or trade union views.

27. Commenting on part II of the report, which gave information in relation to articles 2 to 7 of the Convention, he said that the Committee would need to have details of the situation with regard to the revision of Act No. 23,302, since the delay that had occurred was prejudicial to the rights of the indigenous population. According to paragraph 24 of the report, the National Indigenous Institute, which was to have been responsible for enforcing the Act, was to be replaced by an authority designated by the Executive. The change might well have financial advantages but, given the important functions assigned to the authority, including that of directing the National Registry of Indigenous Communities, it might legitimately be asked whether an authority independent of the Executive would not have offered greater guarantees. He would like to know what arrangements were being made to prevent the risk of government control and what role the indigenous population itself would play in the new authority.

28. In paragraphs 27 to 29 of the report, it was indicated that the amendments to Act No. 23,302 would provide the indigenous population with greater guarantees for land use so as to prevent speculation by non-indigenous persons. That was a very important measure, but it was also important to know what action the Government had taken to protect indigenous lands against speculators pending implementation of the amendments and whether there had been any incidents between the indigenous population and speculators. In that connection, the representative of Argentina, in his introductory statement, had already given welcome information regarding a new law to protect the lands of the Guarani communities.

29. In paragraph 30 of the report mention was made of a proposal to make provision for bilingual intercultural curricula in education, with participation by the indigenous population itself. There again, it might be asked what guarantees were provided to ensure that the indigenous population would have access to the teaching of its own culture pending implementation of the proposed new legislation. The representative of Argentina had already provided some information regarding the protection of the Guaranis' cultural heritage and their education. What was the position with regard to the other indigenous groups? A similar question might be asked concerning the abuses committed against indigenous persons in the field of employment, due process, defence before the courts and fair penalties referred to in paragraph 31 of the report. Were such abuses committed by public servants or judges, and pending the implementation of the new legislation, what measures had been taken to control them?

30. Paragraph 34 of the report indicated that it was difficult to state the number of indigenous people given land rights and the amount of land transferred to them. The situation in that respect apparently depended on the characteristics of each province and its laws. The Committee obviously understood the constraints imposed by a federal system, but surely some federal authority could supply a few statistics?

31. Argentina's brave decision of 22 May 1986 to break off diplomatic relations with South Africa, despite the large loss of trade involved, had been very welcome. However, it would be interesting to know whether that policy was still being maintained.

32. Paragraph 57 of the report stated that, under the 1988 Act relating to the punishment of discriminatory acts on grounds of race, religion or nationality, it was a punishable offence to participate in organizations or to produce propaganda based on ideas or theories of the superiority of a particular race or a group of persons of a specific religion, ethnic origin or colour. It would be interesting to know whether such groups or organizations existed in Argentina and, if so, whether criminal proceedings had been taken against their members. Information on that point would help the Committee to determine the international extent of the phenomenon.

33. According to paragraph 58 of the report, article 20 of the Constitution provided that aliens should enjoy the same economic, social and cultural rights as Argentine citizens. Did that mean that aliens did not need to meet any requirements as to residence in order to enjoy those rights, and were aliens entitled to vote in elections?

34. Paragraph 61 of the report indicated that racial hatred was considered to be an aggravating factor in various offences under the Argentine Penal Code, but were incitement to racial hatred and racist remarks in themselves punishable offences? The report gave no example and no statistics of sentences imposed for offences connected with racism. That was a serious shortcoming in the light of the contents of the section of the Committee's 1983 guidelines regarding the implementation of articles 5 and 6 of the Convention, and the information concerned was very important in enabling the Committee to assess the degree of practical implementation of the Convention in each country. Some particulars on that point would be appreciated.

35. As far as the implementation of article 6 of the Convention was concerned, the Committee would need to know the nature of the offences mentioned in paragraph 63 of the report in respect of which criminal proceedings were initiated automatically and what system there was for initiating proceedings in respect of other offences. It would also need to know how frequently the special remedies referred to in paragraph 66 of the report were applied for, and what role the Under-Secretariat for Human Rights within the Ministry of the Interior played as distinct from the role played by the ordinary courts, and in particular whether human rights complaints had to be submitted to the Under-Secretariat.

36. All those questions bore witness to the interest aroused by Argentina's tenth periodic report and could not have been asked, or would at least have remained unanswered, during the period of military dictatorship from 1976 to 1983. To ask them now was a tribute to Argentine democracy.

37. Mr. WOLFRUM asked why no effort had been made to update the 1968 census. It was difficult to help the indigenous population if there was uncertainty as to its numbers.

38. Commenting on the Bill to amend Act No. 23,302 on Indigenous Policy and Assistance to Indigenous Communities, he noted that the definition of an indigenous community was apparently to be based on the principle of self-recognition. It was important to know who took the relevant decision - the individual, the community or the State - and whether

the community could reject an individual's application for membership. Information on the status of the National Registry of Indigenous Communities mentioned in paragraph 26 of the report would also be welcome. Paragraph 26 also stated that the National Registry had the power to withdraw legal personality, but paragraph 23 indicated that an indigenous community would lose its legal personality only when it ceased to exist as such. An elucidation of that apparent contradiction would be appreciated. Under the proposed new article 7 of the Act, lands were to be awarded for community use, but it would be interesting to know who were the current owners of the lands in question. Was it possible to expropriate land for transfer to indigenous communities, and could the authorities declare former unfair purchases of such land to be illegal or void?

39. The amendments recently made to the Penal Code seemed to meet the requirements of article 4 of the Convention. However, the scope of the Act of 1988 relating to the punishment of discriminatory acts was not entirely clear. Did it merely provide for the prosecution of members of organizations pursuing racist ideas, or did it also prohibit the establishment of such organizations, as required by article 4 (b) of the Convention?

40. Lastly, he would like to know whether it was true that immigrants from the Republic of Korea had to pay a large sum in order to qualify for residence in Argentina and, if so, whether the same sum was required of immigrants from other countries, such as Spain or Italy. Any discrimination in that respect would be a violation of the Convention.

41. Mr. SONG Shuhua said that Argentina's concise tenth periodic report was satisfactory because it strictly followed the Committee's guidelines, took account of the questions raised by members during the Committee's consideration of Argentina's previous report, and was amply documented.

42. Since 1985, the Government of Argentina had adopted new legislation to protect minorities and women. Under article 31 of the Constitution, international conventions adopted by act of Congress could be invoked directly before the courts. Efforts had been made to safeguard the cultural heritage and rights of the indigenous population. A new census would help the Committee to understand trends in population and land ownership among the indigenous community.

43. Paragraph 31 of the report indicated that measures were planned to ensure the application of the labour laws to the indigenous population. Information on progress made in that respect would be welcome. As far as the National Literacy Plan mentioned in paragraph 74 of the report was concerned, it would be interesting to have an indication of the general educational level of the indigenous population. The report noted the action taken by the Government to safeguard the land rights of the indigenous population, but some figures on the proportion of indigenous persons involved in that action would be appreciated.

44. Mrs. SADIQ ALI asked what impact recent adverse economic developments in Argentina had had on its human rights programme, and particularly on the condition of the indigenous community.

45. Argentina had a history of anti-semitism, which occasionally produced anti-semitic incidents. They were not reflected in the report before the Committee. With the growing Jewish community estimated at 300,000, such cases must be on the increase. Under article 4 of the Convention, all States parties were obliged to prohibit anti-semitic acts and to penalize participation in them. The systematic exclusion of Jews from important institutions such as the armed forces was also discriminatory. She wished to know of any action taken on those grounds against persons responsible for recruitment.

46. In paragraph 8 (c) of the report, reference was made to the establishment of an Ombudsman. Had any cases of racial discrimination been brought before him, and had any been referred to the Prosecutor-General for action? In paragraph 8 (f), it was stated that Congress had adopted a law relating to the punishment of discriminatory acts committed on the grounds of race, sex, religion or nationality, the text of which had been published as annex 2 in Spanish only. Since most members of the Committee were unable to read Spanish, it would have been better if the relevant portions of the Act had been reproduced in the body of the report. The Executive had suggested that the terms of the Indigenous Policy and Assistance to Indigenous Communities Act should be examined in consultation with members of the indigenous communities in order to determine whether changes were needed. Had that been done and, if so, what were the salient features of the amended Bill? In paragraph 17, a rough demographic composition of the indigenous population was given. It would be helpful to know whether the survival of some of the communities mentioned was in danger, whether action was being taken to improve their chances of survival - for example, in the field of health and employment, and whether the indigenous population was tending to move from the countryside into shanty towns.

47. A UNESCO report issued on 21 August 1988 indicated that 45 million people in Latin America and the Caribbean were illiterate. Since illiteracy obviously had an impact on underemployment and unemployment, she would like to know about the situation in Argentina and the composition of Argentina's labour force. She would also like to know whether in Argentina there were special radio programmes for indigenous groups or whether radio broadcasts were used as a means of promoting Western culture only.

48. Mr. FERRERO COSTA said that Argentina's tenth periodic report was in conformity with the Committee's guidelines and recorded significant progress as far as the treatment of the indigenous population was concerned. In the latter connection, he would like to know how the provision for bilingual intercultural curricula, mentioned in paragraph 30 of the report, was working out in practice, particularly in the light of the difficulties referred to in paragraph 73.

49. The democratic Government's decision to break off diplomatic relations with South Africa, despite the loss of trade involved, was highly commendable. He asked whether there were still any political contacts or trade or investment relations between Argentina and South Africa.

50. Mr. RHENAN SEGURA welcomed the punctuality with which the report had been submitted. He would appreciate information on the degree of indigenous

representation in Parliament and, in particular, on whether there were indigenous representatives in legislative bodies in areas such as Misiones, where there were large indigenous concentrations. He would also like to know whether the language used in the courts was Spanish or an indigenous language or both.

51. He had noted that, in accordance with the Argentine Constitution, the President of the Republic must be a Roman Catholic. Such a provision appeared to represent discrimination against other beliefs. He would like to know whether that provision was likely to be amended.

52. The CHAIRMAN thanked the representative of Argentina for his country's excellent report and his comprehensive introduction, which together clearly demonstrated the progress made since the previous report in implementing all aspects of the Convention. The Committee's report would reflect those facts.

53. Paragraph 8 (c) of the report indicated that, in October 1985, the Buenos Aires City Council had established the Office of Ombudsman. He would like to know whether, on the basis of the experience gained since 1985, the Argentine Government was considering establishing similar offices in other areas of the country.

54. He would welcome information on whether the proposed amendments to Act No. 23,302, referred to in paragraph 21, had been approved. He trusted that the new form of indigenous community mentioned in article 2 of the Act would not lead to the development of "ghettos" of indigenous groups.

55. Paragraph 74 indicated that difficulties existed for the indigenous population in the educational field. The fact that more than 4,000 literacy centres had been established throughout the country spoke for itself. He would like to know the results of that action and whether the Government was considering other measures in that field, where clearly the situation was very serious.

56. Mr. LANUS (Argentina) thanked members for the interest they had displayed in his country's report. He would try to answer the 38 questions asked by members and the 3 raised by the Chairman. If his answers were not satisfactory, he hoped that members would say so and he would endeavour to provide further information in writing.

57. The situation of the indigenous peoples of Argentina was greatly influenced by the country's cultural background. Argentina was vast and sparsely populated. It was often impossible to know exactly where indigenous tribes lived, particularly in the forest regions and in the north of the country. Some tribes were mobile and moved from one place to another. The intention of the Government was to disturb the tribes as little as possible because of the risk of destroying them; some tribes had had little or no contact with white people.

58. Because of the country's cultural background, the concept of racism was alien. Argentina was the second country in the world, after the United States, in terms of the numbers of immigrants it had accepted over the years. In 1914, 30 per cent of the population had been foreigners and

subsequently there had been huge influxes of immigrants. Because the country had absorbed individuals from many different cultures, racism, in the European sense, was unknown. There was no compartmentalization between races.

59. In reply to the question about the possible extension of the Ombudsman system beyond the city of Buenos Aires, he would like to say that that system also existed in the Provinces of Rio Negro and San Luis, and the possibility was being investigated of introducing it in Chubut in the South.

60. In reply to the request for information regarding legislation in other provinces, much provincial legislation, particularly in the North and in the Andean region, went back a long way in time and frequently there was no compilation of such legislation. It was quite difficult to obtain old provincial laws but he would do his best to obtain the information requested.

61. In reply to the question on proposed changes to Act No. 23,302, the changes had been proposed by the Government of President Alfonsin but had not yet been approved. Act No. 23,302 in its existing form therefore continued in force.

62. On the issue of ministerial structures, the Constitutional Government, subsequent to its accession to power in 1983, had established eight ministries. Under Decree No. 932 of 11 June 1986, the Under-Secretariat for Human Rights in the International Sector had been established within the Ministry of Foreign Affairs and Worship, thereby raising the status of the Directorate-General which had functioned since the Constitutional Government had assumed office. Decree No. 2347 of 17 December 1986 had established the Directorate-General for Human Rights and the Directorate-General for Women, within the Under-Secretariat for Human Rights in the International Sector.

63. Provision had also been made for the establishment of separate Ministries of Education and Justice. The Ministry of Justice had not yet been set up, however, and, for the moment, the relevant functions were handled by the Under-Secretariat of Justice in the Ministry of Education.

64. A question had been asked about the number of indigenous communities and inhabitants. The most recent census had been taken in 1968 but a new census would be conducted on 14 May 1991. The data contained in the report had been taken from the 1968 census. Attempts would be made in the new census to identify indigenous groups and the extent of internal migration. The expression "indigenous" required elucidation, however. Many members of integrated communities might have Indian or partly Indian origins, but they were now integrated into society as a whole. Race was difficult to identify as there were so many mixtures. Very few people therefore could be included in the purely indigenous category. Moreover, in the north and in the forest regions, it was difficult for census-takers to find some indigenous communities. He would welcome suggestions from members as to how that practical problem might be handled.

65. The information requested on social and economic matters was already available to the public in United Nations reports, but such information could be included in future reports. During the past 10 years, the country's output had fallen by 10 per cent, largely due to international conditions such as

growing protectionism in overseas markets and unfavourable terms of trade. The economic problem was the result not so much of shortcomings in the Argentine economy as of international conditions. There was no recent information on population movements from rural areas to urban centres.

66. On the question of political concerns, such as the consolidation of democracy, amnesty and the military rebellion of 1990, the period of military rule, which had started in 1976, had ended in 1983. Subsequently, there had been a consolidation of democracy in terms of freedom of speech and the press and observance of all the guarantees specified in the Convention. Fortunately, civil authority had prevailed in the recent military rebellion; the rebels were being detained pending trial.

67. Reference had been made to the issue of amnesty. In Argentina the offence of "rebellion" was punishable under the Penal Code as well as under military law by the sanctions specified therein.. President Alfonsin had decided to prosecute a number of political and military figures for unconstitutional behaviour and they had been duly sentenced to long terms of imprisonment. The President had the right of pardon - not pardon of the offence but pardon of the punishment. The sentences of many of those who had been found guilty had been commuted by presidential pardon but substantial portions of the sentences had already been served. The right to grant amnesty or pardon was the personal prerogative of the President alone.

68. Regarding the question of disappeared children, the Government had undertaken a major campaign to investigate what had happened. In particular, it had employed a German procedure for the establishment of paternity by blood test. An institution had been set up for that purpose and two children, who had been adopted in Paraguay, had been recovered after Argentina had established their true parentage. Altogether 30 or 40 children were involved. The topic was very sensitive, in particular because the children had become part of their adoptive families.

69. A question had been asked about possible discrimination against left-wing sympathizers. The Argentine judicial system was independent and the Executive was not permitted intervene in the work of the courts.

70. In reply to the question whether the proposed amendments to the Indigenous Policy and Assistance to Indigenous Communities Act would be adopted, he was not aware of what had happened in Parliament and would therefore look into the matter. He was not acquainted with the situation in regard to the proposed replacement of the National Indigenous Institute by another body.

71. On the question of land ownership, the Government was trying to strengthen the position of the individual indigenous communities. The period during which land awarded could not be sold or transferred had been extended from 20 to 40 years. A continuing problem, however, was the lack of adequate registers of land ownership in areas more than 400 kilometres from Buenos Aires.

72. In reply to the question regarding bilingual curricula, it was only in provinces such as Misiones, where there were large indigenous communities,

that it was possible to provide bilingual education. A current problem was to safeguard those languages, such as Guarani, Quechua and Mapuchi, which were disappearing. The problem of a lack of teachers in indigenous languages was a perennial one.

73. Although there had been abuses against the indigenous population in the past, no recent cases had been reported. In general, however, the poorer, less educated members of society were inevitably more open to abuse. On the question of property, to which he had already referred, he would merely add that title deeds were being issued by the provincial authorities.

74. Diplomatic relations with South Africa had been broken off in 1986, leaving only relations at the consular level. Cultural ties were maintained and there was no bar on relations between individual citizens of the two countries. With regard to investment, there were no laws against South African investment and property ownership in Argentina.

75. Engaging in racist propaganda was a punishable offence. That meant that any groups pursuing racist aims were debarred from forming associations. Any incitement to, or acts of, discrimination within the meaning of article 4 of the Convention constituted a breach of the law, including the Civil and Penal Codes and laws passed to give effect to the international conventions to which Argentina was a party, since the latter were automatically incorporated into domestic legislation once they had been ratified by Congress.

76. Mr. PAZ (Argentina), replying to questions about the naturalization of aliens, said that, if anything, the Argentine Constitution was more favourable to aliens than to nationals since an alien, on arrival, enjoyed all the rights of nationals, with the exception of compulsory military service and the obligation to vote. It was easier for an alien than for a returning Argentine citizen to take up residence in Argentina. Aliens could acquire Argentine nationality after a period of two years' residence, although that time-limit was even shorter in the case of a couple with a child or children born in Argentina. The granting of citizenship was subject only to an examination on the first 24 articles of the Constitution and an oath of allegiance to the State. Further information would be provided on request.

77. Mr. LANUS (Argentina) said that information on sentences passed would be requested from the Ministry of Justice and conveyed to the Committee. A distinction was drawn between public and private offences. Allegations of the former, which were offences concerning society as a whole, could be reported by any person, whereas private offences, such as burglary, physical attacks or breaches of contractual obligations, were notified by the victims themselves. The judicial system was based on the French system and included a Supreme Court with competence for major cases involving constitutional issues and federal courts with jurisdiction in cases coming under federal legislation, such as those involving the armed forces, the railways and State or provincial authorities. There were no longer any special tribunals or *fueros*, such as ecclesiastical or indigenous affairs tribunals, since everyone was equal under the law. With reference to paragraph 69 of the report, complaints of human rights violations could be brought before the courts at any time. Although Spanish was the official language in the courts, the

defence of non-Spanish-speaking citizens was guaranteed by the provision of interpretation services; it was indeed in the interest of the community that such citizens should be properly represented.

78. That no census had been carried out since 1968 could be attributed to the fact that it was an extremely expensive exercise, given the enormous territory to be covered. On the subject of paragraph 26 of the report, to which Mr. Wolfrum had referred in connection with the amendments to Act No. 23,302, the aim was to protect the indigenous communities, since there were cases of persons or entities claiming property in the name of indigenous communities that no longer existed, and the purpose of the new provisions was to detect such cases of fraud. Regarding his question about who owned the land, much of it was common land.

79. In reply to the question about offences concerning discrimination on grounds of religion, race and the other grounds covered by the Convention, the relevant provisions of the Penal Code would be provided to the Committee.

80. On the question of financial contributions required of immigrants or settlers, particularly of Korean origin, for the acquisition of property, he said that the only official procedures were those required of all would be property owners, regardless of nationality. The Government was aware, however, of unscrupulous groups unlawfully taking advantage of those who wished to buy property and offering assistance in the completion of the necessary procedures for a fee. That practice was being actively investigated and the guilty parties would be prosecuted.

81. Mr. Song Shuhua had asked whether any measures were being taken to protect the indigenous population and whether it was in decline. Its numbers were declining, not because the indigenous communities were dying out but because they were more fully integrated into the mainstream of society. They were not being persecuted. The forthcoming census would provide figures on their numbers. Education was now non-denominational, free and compulsory for all, although there were clearly difficulties for pupils living in very remote areas who sometimes had to travel on foot to the nearest schools. Overall, the educational standard was high, and Argentina's literacy rate, 94 per cent, was the highest in Latin America. Education had always been a high priority, dating from the legacy of Spanish rule, and no one was excluded from the acquisition of knowledge. The figures requested concerning officials responsible for indigenous affairs were not available for all the provinces, but would be ascertained and provided to the Committee.

82. In reply to Mrs. Sadiq Ali's question about the impact of the serious economic situation on human rights, he said that economic circumstances might affect the living conditions of the population in other spheres, but not human rights because of the widespread awareness of fundamental rights and freedoms among the population. The general situation of the indigenous communities depended, in particular, on where they lived. Those living in remote areas, for instance, with limited access to educational facilities, would be at a greater disadvantage.

83. Anti-semitism was a thing of the past, a notable example being the influence of European Fascist movements in the 1930s. Isolated incidents

had occurred, but they were not symptomatic of a wider social phenomenon in Argentina, which had the largest Jewish settlement in Latin America, and also had substantial Arab communities in the north of the country.

84. On the subject of assistance to indigenous communities, he assured the Committee that the amendments to Act No. 23,302 would be adopted in consultation with the communities themselves. A question had been asked about the composition of indigenous communities in the Buenos Aires area. It should again be emphasized that members of indigenous groups living outside their own communities were not identified as such and received equal treatment in society, for instance in job applications. The low literacy rate in those areas was largely due to prevailing economic and social conditions. The Government was aware of the need to preserve indigenous culture through appropriate programmes, such as the bilingual curricula, still at the drafting stage, to which he had already referred, and through the media. Special radio programmes existed in some provinces, such as La Pampa and Misiones. It should be added that the vast majority of the indigenous population spoke Spanish.

85. In reply to Mr. Ferrero Costa's question about representation of the indigenous population in Parliament, he said that there was no official distinction between indigenous and non-indigenous representatives, although many parliamentarians belonged ethnically to indigenous groups.

86. He confirmed that, as a result of a long-standing tradition, the President of the Republic was still required to be of the Catholic faith. In conclusion, he assured the Committee that its questions and comments would be taken up in detail in the next report, pending which a copy of the relevant provisions concerning offences on grounds of discrimination would be forwarded to the Committee.

87. The CHAIRMAN said that the Committee had thus concluded its consideration of the tenth periodic report of Argentina (CERD/C/172/Add.18). He hoped that the next report of Argentina would include responses to unanswered questions and, in particular, data resulting from the forthcoming census.

X

The meeting rose at 1.10 p.m.

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Thirty-ninth session

SUMMARY RECORD OF THE 893rd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 6 March 1991, at 3 p.m.

Chairman: Mr. SHAHI

CONTENTS

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Tenth periodic report of the Ukrainian Soviet Socialist Republic

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Tenth periodic report of the Ukrainian Soviet Socialist Republic (CERD/C/172/Add.14)

At the invitation of the Chairman, Mr. Ozadovski, Mr. Vassylenko, Mr. Emetz, Mr. Koutchynski and Mr. Maimeskoul (Ukrainian Soviet Socialist Republic) took places at the Committee table.

1. Mr. OZADOVSKI (Ukrainian Soviet Socialist Republic) said that, since the submission of his country's previous report in 1989, many political, economic and social changes, with far-reaching effects on every aspect of life, had taken place. For the first time, elections to Parliament and to the local Soviets had been held in an atmosphere of openness and transparency. The Supreme Soviet of the Ukrainian SSR was now composed of members representing the various social and political groups. Far-reaching changes were currently being made to Ukrainian law, and his delegation would be most willing to hear any recommendations or proposals that members might make as to how mechanisms for establishing a true democracy in the Ukraine might be improved. In that connection, his delegation had noted with great interest an article prepared by a member of the Committee, Mr. Banton, in which he expressed his doubts as to the validity of a provision in the report by which the very nature of the economic and social structure of the Ukrainian SSR totally excluded the possibility of any manifestation of racism or racial discrimination. Had the report been prepared today, it would not have included such a claim.

2. One of the most significant events during the period that had elapsed since the date of the tenth periodic report had been the adoption in July 1990 of a document of historic importance, the Declaration of State Sovereignty of the Ukraine. It was true that that text had not yet been fully implemented in terms of legislation, but it was an indication of how Parliament envisaged the Republic's future. By sovereignty was implied the indivisible right of the Ukrainian people to conduct its own affairs on its own territory, to solve by itself any political, economic or cultural problems that might arise in the country, to choose the form and structure of its organs of government and administration, to enforce laws on its territory and to exercise legislative, executive and judicial powers. The Declaration also recognized that international law took precedence over national law, and aimed to defend the fundamental interests of the Ukrainian people regardless of race. Thus, it guaranteed equal treatment for all citizens before the law, without distinction as to racial or national origin, social status, education, language, political or religious beliefs, occupation or other factors.

3. In implementation of the Declaration, a number of new laws, notably in the human rights field, had been adopted in late 1990 and early 1991, such as the law on the economic independence of the Ukrainian SSR, based on a social market economy, and the law on property. Parliament was also considering further bills which would provide a legal basis for international co-operation in various fields, notably a bill laying the foundations for external economic activities that was designed to facilitate foreign investment.

4. With a view to confirming human rights in the economic and social field, ensuring political pluralism and guaranteeing freedom of expression, the Presidium of the Supreme Soviet of the Ukrainian SSR had passed a decree governing the registration of social organizations, which would remain in force until Parliament had adopted an act on the subject. In addition, regulations governing the registration and the activities of religious groups had been made more liberal.

5. In the Republic's Supreme Soviet, a Commission consisting of researchers, jurists and deputies had begun work on a new Constitution based on the principles of humanism and freedom. The Ukrainian SSR was the first Soviet Republic to have a Parliament which included a Human Rights Commission. The task of that Commission was to ensure that any laws passed were consistent with international human rights standards.

6. The Supreme Soviet of the Ukrainian SSR had set up a Commission to defend the rights of victims of the Chernobyl accident. Following an initiative by the Commission, Parliament had adopted a bill in February 1991 providing for medical benefits, welfare support, and allowances of various kinds for the victims.

7. The Ukrainian SSR was also participating in a number of international activities in the human rights field. In December 1990, it had signed the Optional Protocol to the International Covenant on Civil and Political Rights, and it was making a contribution to the work of international standard-setting being carried out by the Commission on Human Rights.

8. The Ukrainian SSR was currently preparing a code of conduct governing its relations with neighbouring republics. In that connection, he reminded the Committee that his country was a multinational State: out of a total of 52 million inhabitants, there were some 150,000 Hungarians, 11 million Russians, and many other minorities.

9. With a view to furthering the Republic's spiritual and cultural development, Parliament had passed a law in October 1989 to promote the Ukrainian language and the languages of the country's national minorities.

10. The Ukrainian SSR observed scrupulously all decisions and recommendations by international organizations designed to eliminate racism and racial discrimination, and had submitted or co-sponsored a number of resolutions condemning apartheid. In that connection, despite recent developments in the situation in that region, its position on international sanctions against South Africa remained unchanged, namely that sanctions should not be lifted until that country had acquired a democratic system.

11. In autumn 1991, the Ukrainian SSR would be commemorating the fiftieth anniversary of the massacre of over 100,000 of its inhabitants by Hitlerian Fascists at Babi Yar, near Kiev. It had recently set up an organizing committee. Among the commemorative events under consideration were an international conference on the struggle against Nazism and racial discrimination, a film festival, a book exhibition and an international competition for the best memorial monument on the theme of the unity of peoples against racism, national hatred and tyranny. Perhaps the festival

could be organized on an international scale, as a warning against the dangers of racial or national prejudice. Members of the Committee might consider the possibility of taking part in the planning of events to commemorate the tragedy.

12. The Ukrainian SSR had recently organized a number of international events to promote human rights, notably a European seminar on international human rights standards, held at Kiev in September 1990. It was making considerable efforts to make human rights better known, in particular by organizing a special training course for judicial and police officials of various categories, as well as courses to increase public awareness of human rights. Ukrainian researchers and jurists were endeavouring to improve their knowledge of how human rights were exercised abroad, with a view to drafting the Republic's new constitution and new laws.

13. The Ukrainian SSR was also planning to publicize widely in the press, and in official and specialized publications, the opinions expressed by the experts in the course of consideration of its tenth periodic report. He would be grateful to members of the Committee for any recommendations they cared to make which would help the country to legislate in the human rights field.

14. The CHAIRMAN thanked the representative of the Ukrainian SSR for having updated his country's report in his oral presentation by outlining the important changes currently taking place. He called upon the country rapporteur to make his comments, and invited questions from other members of the Committee.

15. Mr. YUTZIS, country rapporteur, said he found himself in an unusual situation in that the oral presentation just made by the representative of the Ukrainian SSR had substantially altered the tenth periodic report by enumerating the many changes that had taken place in the country in such a short space of time. His position was made all the more difficult by the fact that most of those changes were still continuing. While not neglecting the report itself, he felt bound to adapt his questions to the new developments which had just been outlined.

16. To begin with, he wished to stress that the Ukrainian SSR had complied with the periodicity requirement for submission of reports. However, he regretted that the report contained no demographic data, which would have helped in particular to clarify the situation of minorities. Although some information on that subject had been given in the oral presentation, it was to be hoped that further details would be supplied in the next report, notably in regard to demographic composition, schooling, participation in public affairs, employment and housing.

17. He noted that the report stated, in the section dealing with article 2 of the Convention, that "the very nature of the present socio-economic and political system in the Ukraine completely precludes the possibility of the emergence or existence of racism or racial discrimination" (p. 2). In view of the fact that the socio-economic and political system in question was currently changing, as the representative of the Ukrainian SSR had just explained, the question arose whether such a claim - which appeared to him somewhat doubtful - could still be valid in a new situation. Following those

changes, had the need to adopt special measures to give effect to the undertakings in article 2, paragraphs 1 and 2, still not arisen, as was claimed in the same section of the report? If, on the other hand, such measures had been adopted, the Committee would need to know on what basis they had been drawn up, and which authorities would be responsible for implementing them.

18. In that connection, the representative of the Ukrainian SSR had referred to an article by Mr. Banton. He himself had not read that article, but he doubted whether any society could be totally immune from manifestations of racism. That might perhaps be so in the distant future, but it was not the case in today's world - all the more so, in that racism had not only social, economic or political origins, but also anthropological origins. He would be grateful if the Ukrainian delegation could comment on that point, in the light of the new situation just described.

19. In regard to article 5 of the Convention, the report stated that "matters relating to the entry into, or departure from, the Ukrainian SSR of Soviet citizens, foreign citizens or stateless persons are governed by the 1970 Regulations on this subject" (p. 4). In that connection, he would like to know whether any distinction was made between Soviet citizens and foreigners, and, if so, whether that distinction was maintained despite the current changes. He would appreciate it if the Ukrainian delegation could tell the Committee of any remaining obstacles to entry into, or departure from, the country.

20. Still in connection with article 5, the part of the report dealing with the right to freedom of thought, conscience and religion (p. 5) noted that there were more than 6,000 religious societies in the Ukrainian SSR. It would be helpful to have some idea of the size of their membership. It was further stated that there was "no religious movement, belonging to any denomination, that attached prime importance to the question of nationality"; that statement called for clarification. In the oral presentation, reference had been made to legal norms governing freedom of religious observance. He understood that in that area certain tensions existed in the Ukrainian SSR, and he would be glad to have further information on the matter. It was his understanding that the Orthodox Church had been pronounced, in the words of President Gorbachev, to be part of the Ukraine's cultural heritage. The question arose, however, of what effect that situation might have on relations between that Church and other religions, particularly in view of certain recent tensions.

21. The representative of the Ukrainian SSR had referred to the rights of minorities, and it would be useful to have details of any legal provisions, either existing or proposed, to preserve the existence, culture and traditions of such minorities.

22. Lastly, he asked whether, in view of the current changes that had just been described, the Ukrainian SSR could now contemplate making the declaration under article 14 of the Convention, which would enable the Committee to gain a better knowledge of how that instrument was being implemented in the country.

23. Mr. WOLFRUM also regretted that the report under consideration contained no demographic data, although a few figures had been given orally. In that

connection, he noted that in the previous report of the USSR, mention had been made of a census; figures for the Ukrainian SSR could certainly be extracted from that census.

24. The representative of the Ukrainian SSR had referred to certain minorities, without mentioning the Jews. It was well known that historically there had been large numbers of Jews in the Ukraine. It would be useful to know the current situation in regard to their right to practise their own religion, speak their own language, have their own schools, etc.

25. As had been pointed out by Mr. Yutzis, the claim that the existing socio-economic and political system in the Ukraine completely precluded the possibility of racism was unconvincing. In fact, there had been recent occurrences of racial tension in countries which had the same system. No State could be immune from racism, and all must take steps to comply with their obligations under article 2 of the Convention.

26. With regard to article 4, mention was made in the report (p. 4) of certain legislation: he would like to know whether that legislation had been invoked before the courts, and with what results.

27. Concerning article 6 of the Convention, reference was made in the report (p. 9), to a decree adopted by the Supreme Soviet on 25 April 1988 on the subject of "complaints against unlawful actions of officials infringing citizens' rights". To what extent had that decree been applied, and what had been the corresponding court rulings?

28. In his oral presentation, the representative of the Ukrainian SSR had spoken Russian, but he had indicated that Ukrainian was predominant in his country. It would be useful to know what was the status of Russian and other languages, for instance before the courts. In what language did Government authorities communicate?

29. Lastly, he too expressed the hope that the Ukrainian SSR would make the declaration provided for under article 14, particularly since it had already signed the Optional Protocol to the International Covenant on Civil and Political Rights.

30. Mr. LECHUGA HEVIA reminded members that on the 17th of the month a referendum would be held in the USSR on the future of the Soviet Union. The results of that referendum might affect relations between ethnic and religious groups, in view of the fact that some groups were more favourable to one outcome, and some to another. Comments by the Ukrainian delegation on that point would be useful.

31. Mr. VIDAS thanked the representative of the Ukrainian SSR for his excellent oral introduction of the report under consideration, as well as for the information he had given on the changes affecting all sectors of society currently taking place in his country. The report had in fact been submitted two years earlier, and in the meantime far-reaching changes had occurred, with the result that questions should now be viewed in a new light. He hoped that the next report would provide a new basis for assessing implementation of the Convention in the Ukrainian SSR.

32. He too would appreciate it if demographic data could be supplied in the next report. He pointed out that, with reference to article 5 of the Convention, the report stated that following a decision taken in 1986, authorization for entry into or departure from the Ukrainian SSR was given "irrespective ... of ... racial or national origin" (p. 4). He would like to have more details on how the system operated, and on the procedures governing departure from the country and return to it. Since the regulations had already been in force for five years, it would be interesting to know how they had been applied.

33. Mr. de GOUTTES also thanked the representative of the Ukrainian SSR for his oral presentation: he had been particularly struck by its sincerity, a quality which was less evident in the report itself. Indeed, the representative had admitted that the report under consideration was not up to date. He himself had not in fact found the report satisfactory; it seemed to him on the one hand too short and too complacent in general terms, (some of the information called for in the consolidated guidelines was lacking) and on the other hand, too long on detail (some figures, for instance, were difficult to verify). He, too, regretted the lack of demographic data.

34. He was also sorry that no information had been given on tensions between ethnic groups and on the claims of the different nationalities. In that connection, he pointed out that a recent report by Amnesty International had described difficulties encountered by the Uniate Church in regard to religious observance, despite the fact that that Church was officially registered. According to Amnesty International, the Pentecostal Church was also encountering difficulties with regard to religious observance and religious instruction. It was reported that persons who had challenged official policy had been imprisoned. The same source referred to difficulties encountered by Jews in connection with the right to leave the country.

35. The report claimed that the socio-economic and political system precluded the possibility of racism; it was nevertheless true that acts of discrimination did occur. The question of the application of the provisions of the Convention by the courts was extremely important in that connection.

36. Perhaps the Ukrainian delegation would not be able to respond immediately to all the questions put by the Committee, and some replies would probably have to be given in the next report.

37. Mrs. SADIQ ALI, referring to the negative effects of the introduction of the market economy in the USSR (increased unemployment, shortages, etc.), asked whether the Ukrainian SSR intended to learn from that experience how to avoid the difficulties that might be involved in the structural changes described. There had been reports of an exodus of Jews from the Ukrainian SSR due to anti-Semitism in that country. Some reports claimed that a number of Ukrainian Jews were going to South Africa. Many believed that, generally speaking, "glasnost" had made the situation of the Jews worse. She would be glad if the Ukrainian delegation could comment on those various points.

38. Mr. FERRERO COSTA expressed the hope that in its next report the Ukrainian SSR would give details on the new legal system it had installed to implement the convention.

39. Mr. SONG Shuhua asked whether in the field of political, economic and cultural rights there were any differences or inequalities between citizens on the basis of their nationality and, if so, what steps had been taken to remedy that situation. It was stated in the report that in 1986 and 1987, full employment had been ensured. Had the changes which had taken place in the country subsequently had any effect on the employment situation?

40. The CHAIRMAN, speaking in his personal capacity, asked to what extent the Crimean Tartars had been reintegrated or resettled in their region of origin. He would also like to know whether, like the USSR, the Ukrainian SSR was planning to enact a law increasing the freedom of religion enjoyed by the various faiths. Lastly, he would like to be given details about the referendum to be held on the 17th of the month, and to know what effect that exercise would have on the various national groups, and on relations between them.

41. Mr. OZADOVSKI (Ukrainian Soviet Socialist Republic), after thanking members of the Committee for the interest they had shown, said that the Ukrainian population had increased by 1.8 million between the 1979 census and that of 1989. The Ukrainian SSR comprised many different national groups. In 1989, Ukrainians had represented 72.7 per cent of the total population, and their numbers had increased by 930,000 by comparison with 1979. Russians, who were the most significant minority, numbered more than 11 million, or 884,000 more than in 1979. The Jewish minority, the third largest, had been 486,000 in 1989, as against 632,000 in 1979. It should be noted that the situation of that minority had improved, and that it now enjoyed the use of a number of facilities, including several theatres, periodicals and synagogues.

42. As far as schools offering instruction in minority languages were concerned, it would not be practical to contemplate opening such schools except in regions where minorities were strongly represented.

43. In regard to languages, it should be noted that, according to the 1989 census, a large proportion of members of certain minorities considered Ukrainian to be their mother tongue. In any case, bilingualism and multilingualism were common in the Ukrainian SSR.

44. The referendum of 17 March had given rise to extensive debate in all sectors of Ukrainian society, notably regarding the possible advantages or disadvantages of remaining within the Union or leaving it. There was a very wide range of opinions on the role which the Ukrainian SSR should play in the future. Under the referendum, all Soviet citizens would have to answer the following question: "Do you consider it essential to preserve the USSR as a federation of sovereign republics in which the rights and freedoms of all nationalities will be fully guaranteed?" The Ukrainian Parliament had decided that in the Ukrainian SSR, voters would also have to answer a second question worded: "Do you agree that the Ukraine should form part of the Union of Sovereign Republics of the USSR on the basis of the Ukrainian Declaration of Sovereignty?"

45. The Ukrainians were all the more conscious of the status of minorities in that over 7 million of them lived in other Republics of the Union. In that connection, the Union of Ukrainian Writers and the Ukrainian Language Society

had recently requested the Supreme Soviet of the Ukrainian SSR to urge Governments of all Republics and regions where Ukrainians were living to ensure that the latter's aspirations were satisfied. In addition, the respective Ministers of Culture of the USSR and the Ukrainian SSR had just concluded an agreement designed to develop the cultural life of Ukrainians living outside the Ukrainian SSR. Lastly, he paid a resounding tribute to the Ukrainian diaspora, which numbered over 3 million people, for the role it had played in preserving the Ukrainian cultural heritage throughout the world.

46. The CHAIRMAN gave the floor to Mr. Emetz, Chairman of the Human Rights Commission of the Supreme Soviet of the Ukrainian SSR, and co-Chairman of the Co-ordinating Council of the Ukrainian Party of Democratic Renaissance.

47. Mr. EMETZ (Ukrainian Soviet Socialist Republic) said that although he was a member of an opposition party he would do his best to reflect as faithfully as possible the position of the Ukrainian Parliament as a whole. The pseudo-internationalist totalitarian regime in force hitherto had been similar to an empire in many respects. It was for that reason that the Ukrainian SSR was still not a completely sovereign subject of international law. Accordingly, it could not be held fully responsible for certain violations of the Convention, but it would do all it could to bring them to an end.

48. Although the Ukrainian SSR had announced that its legislation took precedence over that of the Union, that announcement had not yet been put into practice. The Ukrainian Parliament was currently in the process of carrying out basic reforms. Parliamentary commissions were dealing with such questions as human rights, national renaissance, and interdenominational problems.

49. That the problems being experienced by the Ukrainian SSR in the current transitional period were not national or racial in character was confirmed by the finding of the Human Rights Commission of the Supreme Soviet when considering individual complaints lodged with it. The totalitarian regime, which had still not been completely eliminated, had refused to recognize national differences and had attempted to Russianize the Ukrainians. That situation was gradually being remedied, since Ukrainian was now the official language.

50. The return of the Crimean Tartars was proceeding normally, although it had given rise to certain problems, notably regarding settlement permits and standards of living, which the Ukrainian SSR was endeavouring to improve to the extent possible. However, what was involved was a social, not a racial problem.

51. Where implementation of the Convention was concerned, laws had been passed and treaties concluded with other Republics. In addition, a number of bodies and associations had been set up to defend the interests of minorities.

52. With respect to article 2 (e) of the Convention, he pointed out that extremist organizations were very much in the minority, and had no support from the population. He regretted that the Rukh Independence Movement had bad relations with the parties currently in power in the Ukrainian SSR.

53. In accordance with article 4 (a) of the Convention, the Ukrainian Penal Code considered any incitement to racial discrimination, or any act of racial discrimination, as an offence. Such offences were deemed to be particularly serious.

54. With regard to subparagraphs (ii) and (iii) of article 5 (d) concerning the right to leave any country and the right to nationality, he deplored the fact that Jews or members of another nationality who left the country were deprived of Soviet citizenship. He hoped that that problem could soon be solved if Ukrainian citizenship was created.

55. With regard to the right to own property, alone as well as in association with others, a law had already been passed. Regarding freedom of thought, conscience and religion, the problem that arose was essentially a practical one, namely to decide whether or not to subsidize the worship and places of worship of different religions. On the right to freedom of peaceful assembly, very considerable progress had been achieved, although one of the laws passed by the Supreme Soviet of the Ukrainian SSR prohibited assemblies during working hours. Again, problems encountered concerning cultural and social rights were the result of the low level of economic development; they were not political.

56. In response to specific questions put by members of the Committee, he said that, contrary to what was stated in the report, the socio-economic and political system prevailing in the Ukrainian SSR had not eliminated, but rather perpetuated, racial discrimination. Steps would have to be taken to remedy that situation. Concerning the right to leave any country provided for under article 5 of the Convention, the existing legal difficulties would probably be overcome in the near future, but the practical difficulties, notably in regard to foreign exchange, were still very real.

57. He admitted that the obligation to make no distinction between nationals and aliens (art. 5 of the Convention) was not currently respected in the Ukrainian SSR. Regarding links between religious movements and nationality, such links indeed existed in reality, contrary to what was stated in the report (p. 5). There were two orthodox churches in the Ukrainian SSR, the Russian Orthodox Church and the Ukrainian Orthodox Church, and the latter was making considerable efforts to create a purely national Church. Over the past two years interdenominational tensions had increased, but measures had been taken to deal with them. Efforts had already been made to assist the Crimean Tartars. It was to be hoped that once the Crimea - which had just obtained recognition of its territorial autonomy - became independent, it would see to it that the Tartars again received justice. Only a small proportion of Crimean Tartars had taken part in the recent referendum, since the referendum had been held not throughout the Ukrainian SSR, but only in the Crimean region, and there were many Tartars outside that region. There were currently 300,000 Tartars who desired to return to the Crimea; 100,000 had already done so.

58. With regard to the request for information on possible cases to have come before the courts, he was unfortunately not in a position to reply.

59. Mr. VASSYLENKO (Ukrainian Soviet Socialist Republic) said he did not think it could be claimed that a particular socio-economic system could of itself preclude the possibility of the emergence of racism or racial discrimination in any form. Account should be taken of history, and of the historical roots - often far back in the past - of the problems now being encountered. Regional differences should also be taken into consideration. Thus, even within the Ukrainian SSR, relations between the national population and minorities varied from one region to another. To take one example, a Polish minority was now living in the western part of the country, but at one time, that region had been Polish territory: at that period, the Ukrainian population had constituted the minority. When Ukrainian territory had been unified to form the Ukrainian SSR, after the Second World War, there had been exchanges of population between Poland and the Ukrainian SSR which had created a détente, and measures had been taken to regulate relations between the two countries. Further measures would need to be taken to defend the interests of the Polish minority in the Ukrainian SSR and the Ukrainian minority in Poland.

60. In the first years after the October revolution of 1917, there had still been a multi-party system in the Ukraine, and efforts had been made to settle problems relating to national minorities in a democratic way. In 1929, just before the setting up of a totalitarian regime in the Soviet Union, the Ukraine had had 24 national regions, 106 municipalities, and 1,807 rural councils. There had been some 2,000 educational establishments offering instruction in a number of different languages (German, Hebrew, Moldavian, Polish, Bulgarian, etc.) and over 500 newspapers in languages of national minorities. All that had disappeared with the coming to power of the totalitarian regime. Indeed, a number of examples could be cited of countries with market economies in which the advent of totalitarian regimes had led to flagrant violations of human rights, notably the rights of minorities. The difficulties which the Ukrainian SSR was currently encountering were thus universal ones. The Ukrainian authorities were aware of the situation and were endeavouring to determine its causes, with a view to taking the necessary legislative measures to remedy it. They were also making efforts to take action in the economic field, and to take preventive measures.

61. On the question as to whether the radical reforms which were a necessary part of the current period of transition to a market economy might not have negative repercussions for national minorities, for example, in regard to employment and housing, it was true that the changeover to a market economy was not without its difficulties. The Ukrainian Government was endeavouring to take preventive measures, but such measures had to be applicable to all, without discrimination of any kind. It should be noted, however, that although under the current system numerous political parties were allowed to operate in the Ukrainian SSR, no party or movement upheld racist ideas.

62. Concerning article 14 of the Convention, it would appear that once it had ratified the Optional Protocol to the International Covenant on Civil and Political Rights, the Ukrainian SSR should have no difficulty in making the declaration provided for under that article. He would put the matter before the parliamentary Human Rights Commission for consideration.

63. Mr. OZADOVSKI (Ukrainian Soviet Socialist Republics), replying to the question on the languages used by Government authorities, said that under a

law governing the use of languages in the Ukrainian SSR, supreme decrees were promulgated in Ukrainian and published in both Ukrainian and Russian. Decrees issued by local authorities were published in Ukrainian, and if necessary in other national languages. Registration of social organizations was carried out in either Ukrainian or Russian. The working language used for documentation was Ukrainian, and communications between Government authorities and enterprises were also conducted in Ukrainian. However, the law provided that another language might be used if it was spoken by the majority of the population, provided that a previous agreement to that effect had been concluded.

64. He thanked the members of the Committee for the understanding they had shown of the very special nature of the current situation in the Ukrainian SSR. All the questions put at the meeting would be duly communicated to the Ukrainian authorities for study. They would be used as a basis for the preparation of the eleventh periodic report, which would contain all the information requested by members of the Committee.

65. The CHAIRMAN thanked the members of the Ukrainian delegation for the frank and detailed replies they had given to questions raised. The Committee would await the next report with keen interest.

Mr. Ozadovski, Mr. Vassylenko, Mr. Emetz, Mr. Koutchynski and Mr. Maimeskoul (Ukrainian Soviet Socialist Republic) withdrew.

66. Mr. YUTZIS, speaking as country rapporteur, noted that the Committee had in effect had two reports before it, a written report and an oral report. The former, which contained little information and none at all on some points, nevertheless provided some information on a situation which had apparently now been superseded by the changes that had taken place, and were still taking place, in the Ukrainian SSR. The oral report included both the oral introduction made by the Ukrainian delegation and the replies it had given to questions raised by members of the Committee. However, some questions had received only very general replies, and others had received none at all. Thus, neither the written report nor the oral presentation provided the information the Committee needed. All the Committee could do was to wait, and hope that the changes currently taking place would be favourable and that steps would be taken to implement the Convention.

67. From the point of view of methodology, it might be useful to set a limit to the speaking-time allowed to representatives of States parties, and to ask them to keep to the point, since it often happened that they failed, in the course of their long statements, to give proper answers to questions raised.

68. Mr. FERRERO COSTA shared that view. He attached great importance to the next report of the Ukrainian SSR, which should provide demographic information, define the State's legal status, and indicate what steps had been taken to give practical effect to the Convention.

69. Mr. BANTON considered that the Committee should be careful to formulate its comments on the various countries in a uniform and precise fashion, and to assess progress achieved in implementing the Convention in each State.

70. With regard to the report now under study, the Committee's comments could include three points: first, that consideration of the report had led to a new realization of the importance of ethnic problems in the Ukrainian SSR; secondly, that many questions had remained unanswered and numerous uncertainties remained; thirdly, the Committee should stress the importance it attached to the next report, and to the demographic information it should contain.

71. The CHAIRMAN said that the Committee had thus concluded its consideration of the tenth periodic report of the Ukrainian Soviet Socialist Republic (CERD/C/172/Add.14).

The meeting rose at 6.10 p.m.

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Thirty-ninth session

SUMMARY RECORD OF THE 894th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 7 March 1991, at 10 a.m.

Chairman: Mr. SHAHI

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Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Tenth periodic report of Argentina (*concluded*)

Sixth periodic report of Burundi

Ninth periodic report of Cuba

The meeting was called to order at 10.25 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Tenth periodic report of Argentina (CERD/C/172/Add.18) (concluded)*

1. The CHAIRMAN invited Mr. de Gouttes, country rapporteur, to make an assessment of Argentina's tenth periodic report.

2. Mr. de GOUTTES, country rapporteur, said that Argentina's tenth periodic report had made a positive contribution in so far as it had presented a fairly complete picture of the situation regarding the adoption of international instruments and had analysed new domestic legislation, particularly Act No. 23,302 on Indigenous Policy and Assistance to Indigenous Communities and the 1988 Act relating to punishment of discriminatory acts on the grounds of race, religion or nationality. The analysis of the new institutions set up to combat discrimination, such as the Ombudsman and the Under-Secretariat for Human Rights, had also been interesting. There had, however, been certain gaps in the report. For example, no information had been given regarding court decisions relating to racial discrimination, and no figures had been given to show the extent to which the indigenous population participated in Congress, the Administration or institutions dealing with indigenous affairs.

3. The oral replies given by the representative of Argentina had been excellent, and most questions had been answered at once. Since not all representatives of States parties could be expected to respond to all the Committee's questions with the same immediacy, it might be desirable to give them time in which to prepare their answers, for submission at the following meeting. Not even the representative of Argentina had been in a position to supply all the figures requested, and it might therefore be helpful if, at the end of the discussion of a State party's report, a final summary indicating the additional information required could be made. Also, the Committee would have to consider whether, in the presentation of the general context, it wished the State party to adopt a narrow approach restricted to the actual implementation of the Convention or whether it also wished to have broader information on the country's economic, social, cultural and political circumstances.

4. Mr. VIDAS agreed with the assessment made by Mr. de Gouttes but suggested that controversial issues that had not been clarified should not be included in the final version, since the representative of Argentina would not have been present when the assessment of his country's report had been discussed. All the questions that had not been replied to orally would apparently be answered in Argentina's next periodic report, which would also contain other requested information. A text of the assessment was needed, and if conclusions were reached, the State party should have an opportunity to react to them.

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* Resumed from the 892nd meeting.

5. The CHAIRMAN said he was sure that the country rapporteur would prepare an appropriately worded draft of the assessment.

6. Mr. de GOUTTES, country rapporteur, said that Mr. Vidas's statement raised the question whether the assessment of a State party's report should be discussed at a public or at a closed meeting.

7. Mr. SONG Shuhua suggested that, in order to help the representative of the reporting State prepare his replies, the country rapporteur should submit, in advance, a list of issues of particular interest to the Committee.

8. Mr. RHENAN SEGURA supported that suggestion.

9. The CHAIRMAN said that Mr. Song Shuhua's suggestion would save time and should be implemented as soon as possible. The question whether a broad or narrow approach should be adopted in the presentation of the general context needed to be taken up at a later stage. In view of the shortage of time, he suggested that the representatives of States parties should be allowed 20 minutes in which to make their introductory statements and 30 minutes in which to give their replies.

Sixth periodic report of Burundi (CERD/C/168/Add.1)

At the invitation of the Chairman, Mr. Muyovu and Mr. Negamiye (Burundi) took seats at the Committee table.

10. Mr. MUYOVU (Burundi), introducing his country's sixth periodic report, reminded members that on 18 August 1989 the Burundi delegation had informed the Committee of the progress it had made in the human rights field, particularly with regard to the policy of unity initiated by the Third Republic. That policy was now beginning to bear fruit. Until the advent of the Third Republic on 3 September 1987 the ethnic question, which had poisoned Burundi's political and social life for a long time, had been taboo for all previous regimes. However, the Third Republic, led by President Pierre Buyoya, had decided to tackle it, declaring that it required a just and lasting solution.

11. In 1988, a Government of National Unity had been appointed and subsequently a commission had been set up to study the question of national unity. The commission's report, published in May 1989, had proposed that a Charter of National Unity be submitted to a referendum. The Head of State had announced the convening, before the end of 1990, of a Special Congress of the UPRONA Party, which was to adopt the Charter. The Special Congress, held from 27 to 29 December 1990, had been enlarged to include many outsiders, and Burundi refugees had been invited to participate. In addition to adopting the Charter, the Congress had considered the country's institutional future and had elected the members of its Central Committee, which replaced the Military Committee for National Salvation. The Central Committee included members from all the ethnic components of the population, including the long neglected Twas.

12. Immediately after the Party's Special Congress, the President of the Republic had called upon all Burundi citizens of voting age to take part in a

referendum to adopt the Charter of National Unity. The referendum had been held on 5 February 1991 in all parts of the country and at diplomatic and consular missions abroad, with 89 per cent of the votes being cast in favour.

13. The Charter of National Unity constituted a general platform for the full exercise of all human rights, including the elimination of racial discrimination. It rejected violence, upheld the right to life, proclaimed the equality of all citizens and the free exercise of public and individual freedoms, recognized the right of every citizen to education and training, guaranteed the right to own property and advocated the organization of society on a democratic basis. In short, it proposed a model for a society in which human rights occupied a leading place. Following the adoption of the Charter, the Central Committee of the Party proposed to strengthen national unity symbolically through the introduction of a Unity Day and Unity Anthem, and the construction of a "Unity Square".

14. A new Constitution was to be drawn up and put to a referendum by the end of 1991. A broad national debate would be organized in which the people of Burundi would have a chance to state their views on the political system that suited them best. The Constitution would certainly not depart from the guidelines contained in the Charter of National Unity. Other important developments included the consolidation of national unity through the implementation of the Charter, an immediate analysis of the refugee question and of the question of compensation for the victims of the ethnic clashes that had occurred in Burundi, and the immediate establishment of permanent democratic institutions.

15. Burundi had ratified the International Convention on the Elimination of All Forms of Racial Discrimination on 1 November 1976. An account of the specific measures taken to give effect to it was contained in the report before the Committee. However, since that report had been drawn up there had been fresh developments in 1990. Over the past three years, the Government had taken further steps to give concrete form to the universally recognized values of the equality of rights and obligations of all human beings, without distinction as to sex, origin, colour, religion or opinion. The Penal Code provided for the punishment of anyone found guilty of racial or ethnic hatred. The Government considered that national unity and social justice were two inseparable faces of the same coin. The equality of all persons before the law was guaranteed by full respect for the independence of the judiciary, and the right to a defence counsel was guaranteed before all courts and at all stages of the proceedings.

16. The new regime had also implemented policies in keeping with the ethics of unity in such sensitive fields as education and employment. The past two years had seen none of the complaints recorded during the Second Republic concerning the criteria for moving from primary to secondary school, repeating a school year or the awarding of scholarships. Everything was now done with the greatest transparency and without any discrimination.

17. Employment was governed by objective criteria such as merit and competence, particularly where recruitment and promotion to posts of responsibility were concerned. The establishment of a recruitment commission

within the Ministry for the Civil Service and of a similar commission within the Ministry of Labour further testified to the existence of a policy of promoting equality of opportunity for all.

18. Civil and political rights, as well as economic, social and cultural rights, were guaranteed for all Burundi citizens without any discrimination, the only constraints being due to Burundi's status as one of the least developed countries, which prevented it from providing sufficient guarantees of some of the rights set forth in the two International Covenants, especially economic rights. In any case, failure was better than not having tried at all, and in that respect the Government of Burundi would not be accused of failing to do everything it could to secure the welfare of the whole population, without any distinction.

19. Burundi had been a sponsor of the resolution entitled "Implementation of the Programme of Action for the Second Decade to Combat Racism and Racial Discrimination", recently adopted by the Commission on Human Rights. It would not have been able to sponsor that resolution if it had not been convinced of the relevance of the measures recommended in the International Convention on the Elimination of All Forms of Racial Discrimination.

20. Mr. NEGAMIYE (Burundi), continuing the introduction of the sixth report, said that prior to the accession to power of the Third Republic, Burundi, under successive Governments, had endured a period of social injustice characterized by personal greed and the dominance of a single social group, while the needs of the people as a whole had been neglected. There had been no sense of partnership between the various groups, while transparency in decisions concerning the life of the population as a whole had been non-existent. The period had been marked by bloody confrontations, tension between Church and State and discrimination at all levels in the fields of the administration of justice, employment and credit.

21. The Third Republic had tackled the problem at its roots and had introduced transparency in decision-making, opened churches which had been closed by the Second Republic, and strengthened co-operation with other countries and with international organizations. The country was currently looking forward to the restoration of justice in education and employment through the establishment of information and recruitment commissions and to organized discussion, both horizontal and vertical, on issues involving national unity, without which no country could achieve democracy and development.

22. A National Commission had been set up to study the issue of national unity and had drafted a Charter of National Unity. In December 1990 a special expanded Congress of the UPRONA (Union for National Progress) Party, which had included representatives of all social groups, had announced important recommendations and innovative measures, including a promise by the Head of State to study, as a matter of urgency, the questions of Burundi refugees and compensation for those who had suffered serious loss as a result of the tragic events of the recent past. The Military Committee for National Redemption had been replaced by a Central Committee of the UPRONA Party. On 5 February 1991, the Charter of National Unity had been adopted by a substantial majority in a national referendum.

23. The National Commission for the return and reintegration of refugees had been enlarged and strengthened and, immediately following the referendum, two human rights groups, namely the Burundi League for Human Rights and the Burundi League for the Defence and Promotion of Human Rights, had been recognized by the Government. At the same time, the Government was organizing a Constitutional Convention to prepare a draft constitution for submission to a referendum.

24. An Economic and Social Council had been set up and had submitted to Congress a report outlining measures which would meet the real needs of society consistent with current economic and social realities.

25. Notwithstanding such progress, much remained to be done and success could not be guaranteed without the support of the international community and, in particular, the United Nations Centre for Human Rights. Advisory services in the fields of information and training at all levels and for all socio-professional groups, in both urban and rural areas, including training in the administration of justice and for the police and army, would provide substantial support for the Government's initiatives.

26. In conclusion, he wished to stress the special importance of the joint efforts of the United Nations High Commissioner for Refugees, non-governmental organizations and the Government of Burundi in the repatriation and reintegration of the refugees and the search for permanent solutions to the problem.

27. Mrs. SADIQ ALI, country rapporteur, observed that the host representative of Burundi had presented his country's report with refreshing candour. President Buyoya was to be congratulated on initiating measures for all-round national reconciliation. As a Tutsi, he had a firm grasp of the country's political reality and was aware that he must reform the system in order to placate the Hutus without alienating the Tutsis.

28. Hutus now constituted half the Cabinet and the President had forbidden reprisals against Hutu returnees from Rwanda and Hutu intellectuals, in sharp contrast with 1972, when the previous regime had hunted down even primary and secondary students as potential intellectuals. The most flagrant measures of discrimination against Hutu elements in schools had been eliminated. The release of detained persons was also commendable, as was the arrest of 20 Tutsis, some rich and prominent, in connection with a coup plot. In addition, four well-known Tutsi former ministers had been ordered to repay the millions of dollars they had embezzled while in office. Above all, leaders of both ethnic groups were being involved in questions of national unity and, for the first time, they had agreed to discuss problems.

29. She wished to raise a number of questions relating to the current report. Since the traditional foundations of Burundi society had been destroyed by the administrative system, she would like to know what effective measures had been taken by the Government, pursuant to article 2 (c) of the Convention, to nullify any discrimination and to ensure that there was no discriminatory application of texts such as those specified in paragraph 18 of the report, and whether any supervisory procedure had been set up. In paragraph 42 of the report, it was pointed out that the Burundi Penal Code provided for sanctions

against anyone who manifested racial or ethnic aversion or hatred or committed an act likely to stir up such aversion or hatred. It would be of interest to the Committee to see the relevant texts, particularly as the provisions of article 4 (a) and (b) were mandatory in that regard. The provisions of article 4 were preventive in nature and clearly stipulated that such offences should be declared punishable by law. At a time when a new philosophy was being discussed to bring about national reconciliation, that article assumed great importance. The Committee would benefit from knowledge of the action taken in any such cases.

30. It was stated in paragraph 45 of the report that justice was administered by the courts and tribunals throughout the territory of the Republic in the name of the people of Burundi. Since law was still very much the private preserve of Tutsi elements, she would like to know what assurance Hutu elements had of equal treatment before the courts. Had any action been taken to strike a balance? In that connection she had formed the impression from the introduction by the representatives of Burundi that changes in the judicial system might be pending.

31. It appeared that the biggest challenge would lie in tackling institutional discrimination - mainly in the army and the educational system - pursuant to article 5 (e) (v). Drastic reform of the educational system would be required to establish equity in entrance examinations, recruitment and admission procedures to higher establishments, including university. It must be stressed that such action would ensure that a new pool of educated Hutu élites would become available for manning middle and higher-level positions in Burundi's system of government and administration. The law was still very much the private preserve of Tutsi elements; the key Ministries of Foreign Affairs and Interior were solidly Tutsi, of the most intransigent hue. It would seem that educated Hutus about to enter the job market would have a very hard time competing with the Tutsis unless the Tutsis agreed to something like an ethnic quota for the allocation of jobs. She would be interested to know whether any such reforms could be expected in the near future.

32. Equally noteworthy were the recommendations of the National Commission on National Unity relating to the organization and management of employment and of the public sectors in a spirit of equity. It was stated that recruitment procedures in the private and public sectors must take into account "certain principles", including the "publication of vacancy notices and the organization of competitive examinations"; furthermore, where promotion to higher posts was concerned, it was vital to base the process on objective criteria such as merit, experience and support for national unity. That was unquestionably the most crucial aspect of all the national unity strategies examined by the National Commission; it was also the one that was least likely, in the short run, to bring about social integration, if only because merit criteria would inevitably work to the advantage of Tutsi elements. They were unlikely to make room for aspiring Hutus, who were probably less qualified and less educated. The question then arose as to how the problem of employment could be solved. In paragraph 54 of the report, it was stated that, in the case of officials who might suffer in terms of career development, the Government was seeking to establish general principles and a new status. More information on that point would be welcome, especially on how the two elements in Burundi society were to be balanced.

33. In connection with article 5 (d) (viii) of the Convention, relations between Church and State were infinitely better than before. Rural communities were once again permitted to hold meetings and much Church property had been returned. But tensions persisted at the individual level between Hutu clerics and the Tutsi élites, both secular and religious. The question which arose was how such tensions were to be reduced and whether the churches were being allowed to play a role in reconstruction and national reconciliation.

34. The army continued to be 98 per cent Tutsi and the instrument of force therefore remained entirely in Tutsi hands. The Committee would welcome information as to whether that situation would remain unchanged in the foreseeable future and whether reforms would be forthcoming. It was difficult to imagine that the army, though under Tutsi control, would be able to control widespread disturbances throughout the country. The army had a vested interest in making sure that the people would refrain from using violence. What, however, was being done to establish a balance between the two elements? What would be the role of the army in the future, if and when national reconciliation had been effected? Would the army be disarmed to an appreciable extent? She would also like to know whether soldiers had been punished for atrocities committed in 1988.

35. The constitutional guidelines developed by the National Commission on National Unity recognized the central nature of the Hutu-Tutsi problem as the basis for a lasting solution to the repeated bloody confrontations between the two elements. The guidelines were therefore of vital concern to the Committee and should be made available to it in English as well as French. They were not perfect and gave rise to a number of reservations; the most obvious deficiency was that the language used was at times deliberately vague, for example, the recurrent use of the term "selfish" as a substitute for ethnic discrimination. The sum of the Commission's recommendations nevertheless represented an important breakthrough towards national reconciliation.

36. The Government had not yet produced a constitution but the call for real powers to be given to the National Assembly was commendable in terms of Burundi's compliance with article 5 (c) of the Convention. If acted upon, that would result in a legislative branch independent of the Government, but the terms of the real distribution of powers between the executive and legislative branches had not been spelt out. Furthermore, if that provision was to become politically meaningful, the electoral process would have to be more than a ritualistic exercise conducted under the control of a Tutsi-dominated single-party system.

37. Paragraph 51 pointed out that all citizens had the right to participate in elections. The Hutus had yet to be authorized to organize themselves politically into a party other than UPRONA. References to the desirability of strengthening the UPRONA Party and its supremacy over all other institutions therefore raised doubts. If the Party was to remain the monopoly of the Tutsi minority, what would be the point of redefining executive-legislative relations? The question might be asked whether there was any hope of pluralism or a multi-party system being introduced in Burundi as was happening in so many African countries. The statement in paragraph 53 of the report was too vague and elusive, and she would welcome further clarification.

38. In order to solve the problems relating to ethnicity, the time was ripe for a follow-up, in the form of an honest exchange of views at the highest level between Hutu and Tutsi élites, including the full participation of Hutu intellectuals now living in exile. She was pleased to learn that such a meeting was to be held and hoped that its results would be incorporated in the next report. In conclusion, she wished to say that the human rights programme of Burundi was highly commendable.

39. *Mr. RHENAN SEGURA* welcomed the report and Burundi's continuing dialogue with the Committee. There appeared to be some conflict between the report and the Charter of National Unity; the latter stressed the unity of the people of Burundi, but the country rapporteur had pointed out that there were two key groups. He would welcome information on the balance between the two ethnic groups; the question might be elaborated on in the next report. He would also like to know whether there was freedom of religion in Burundi and how such freedom was exercised.

40. *Mr. WOLFRUM* said that the report emphasized the need to preserve national unity. That, however, could be interpreted as entailing a prolongation of the current situation, in which the Tutsis predominated. Most of the military for example, were Tutsis. He hoped the representative of Burundi would explain the changes which would lead to greater balance between ethnic groups in all areas of public life. He would also welcome further information on how it was proposed to encourage Hutus to re-enter the educational system at all levels.

41. *Mr. de GOUTTES* wished to know what judicial proceedings had followed the violent disturbances in the north of the country in August 1988. Had the initial arrests and detentions been followed by measures of clemency and liberalization, and had penalties been imposed on military personnel guilty of acts of violence at that time?

42. Secondly, he requested further information about the two human rights leagues referred to by the representative of Burundi, particularly in regard to their composition, functions and role *vis-à-vis* the public authorities.

43. *Mr. BANTON* said that the sixth report conveyed an impression of complacency which was at variance with the admission in the draft Charter of National Unity that the country's image had been tarnished by cyclical crises of violence. There was no concrete evidence to suggest that the conditions that had caused the events of 1988 had significantly changed. The record of the Committee's deliberations would, he hoped, reflect the Committee's suggestions as to the kind of changes that were needed. For instance, the Committee must have demographic data on the Tutsi and Hutu peoples in order to monitor the implementation of the Convention in Burundi, even though it appreciated that the two groups, which in many respects shared a common culture, were not ethnic groups in the usual sense. He wished to know why the Government of Burundi could not follow the example of its neighbour, Rwanda, which was implementing a policy of balance and proportional representation between the major ethnic groups.

44. He endorsed Mrs. Sadiq Ali's request for details of the sanctions provided for under the Penal Code, in connection with paragraph 42 of the report; information was also needed on the use of sanctions by the courts,

whether they were effective and whether access to legal remedies was readily available. In general, more information was needed on the implementation of article 6 of the Convention. He also endorsed Mrs. Sadiq Ali's comments on the National Commission on national unity. If national unity was to become a reality, the Government would need to redress the imbalance in the distribution of civil service posts between the Hutu and Tutsi peoples.

45. As rapporteur for previous periodic reports of Burundi, he was disappointed that requests for details of action taken by Burundi on the Committee's recommendations had gone unheeded and that little factual information had been provided to supplement expressions of good will.

46. Mr. MUYOVU (Burundi) said that it was difficult to give a full account of his country and its problems within the space of a few pages or in a few words. He reminded the Committee that its historical background had been given in the previous report and that the analysis made by Mr. Banton, the country rapporteur at the time, had been deemed less than objective by his country's representatives, who had refuted some of the points made. Briefly, it should be said that prior to the arrival of the colonial Power, society and political life in Burundi had been well-structured and united, under the supreme authority of the King. It was the colonial Power that had introduced the ethnocentric concept and, playing on the differences between the Tutsis and the Hutus, had laid the foundations of an administration based on privilege. The Tutsis had been given the monopoly of senior posts, sowing the seeds of resentment among the people of Burundi. After independence, a power vacuum left by the assassination of the Prince had exacerbated discord among the élites, leading to the bloody events of 1965. Tension had mounted during the period following the coup d'état in 1966, and the Government had been unable to prevent the violent disturbances of 1972, which had resulted in huge loss of life, particularly among the Hutus. A policy of discrimination in the army and in education had further accentuated ethnic strife, which the Government of the Second Republic had proved unable to curb. The Government of the Third Republic, which had taken office in September 1987, had had the great merit of recognizing the problems of inter-ethnic tension and launching a national debate on the issues involved, at all levels of society and public life. The ensuing consultations had led to the preparation of a blueprint for a new policy of national unity, drawn up by the National Commission on national unity.

47. The recommendations of the Commission had been implemented forthwith. Of the bodies set up pursuant to its recommendations, the Economic and Social Council had submitted a report at the end of 1990, and at the end of 1991 the people of Burundi would have the opportunity to express their opinion on the proposed charter for development. A commission for the repatriation of refugees had also been set up, and its role and financial resources had been substantially strengthened. With regard to recruitment for both the public and private sectors, a tripartite recruitment commission had been established by ministerial order in July 1988, with responsibility for all matters relating to recruitment, posting of vacancies, contacts between employers and employees, and other labour issues. At the beginning of 1990, a special commission had been established with wide powers concerning recruitment for the civil service. In education, a fellowships and training commission had been established, and the national examination for admission to secondary

education had undergone a thorough reform based on non-discrimination. Admission was restricted only by the availability of places and not by ethnic criteria.

48. Both the Hutus and the Tutsis were represented in the civil service, although, since previous regimes had favoured the latter, strictly equal representation could not be expected overnight. The Government's policy was to ensure fair representation progressively at all levels of the administration, beginning with the Government, where the Hutus already outnumbered the Tutsis. The ever-present aim was to promote national unity, and recruitment and participation were based on merit and competence.

49. The predominance of Tutsis in the armed forces should not be seen as an obstacle to national reconciliation, since it was a national army and its purpose was not to defend the Tutsis. After the proclamation of the Third Republic in 1987, the Military Committee for National Redemption had been replaced by the Party Congress, which had elected a Central Committee of the UPRONA Party in which the Hutus and Tutsis were equally represented and which comprised representatives of all socio-professional sectors.

50. In reply to Mrs. Sadiq Ali, he said that non-discrimination was amply provided for in legislation and other statutory instruments. What was important was that there was now the political will to ensure their application in practice. Monitoring procedures now existed at the level of the party and the administration, through the various commissions to which he had referred. Decree-Law No. 1/001 was a transitional text pending the adoption of a new Constitution at the end of 1991. With reference to paragraph 42, the relevant article of the Penal Code provided for sanctions against anyone who manifested racial or ethnic aversion or hatred or committed an act likely to stir up such aversion or hatred, but a text of that nature could not be expected to contain specific details of such sanctions. So far no one had been convicted under that article; certain persons had been held for questioning but had been released on grounds of insufficient evidence. Mrs. Sadiq Ali was mistaken in believing that the law was the preserve of the Tutsis. Everyone in Burundi was equal before the law; the judiciary was independent and ensured equal treatment of all citizens. Every effort was being made in all spheres of life to ensure social integration and eliminate disparities. The Church, for its part, played a major role in national unity. The Catholic Church of Burundi had been the first to denounce the violations committed under the Second Republic and was endeavouring to promote reconciliation, notably through its participation in the human rights associations.

51. In reply to Mr. de Gouttes' question about the human rights leagues, he said that they were multi-ethnic in composition, that their function was to enhance and protect human rights, and that they were independent of the public authorities.

52. It was somewhat irrelevant to speak about the participation of the Hutus in political parties other than UPRONA, since the focus of attention was now on the Burundi people as a whole, as was stressed in the draft Charter of National Unity, rather than on ethnic differences. Now was not the time to draw a distinction between the two main ethnic groups, since that would only

revive tension. The Government wished to promote equality and not to practise reverse discrimination, and he was able to inform Mr. Banton that the Government of Burundi was indeed considering deleting the reference to ethnic origin in the passports of Burundi citizens.

53. In conclusion and in reply to Mr. de Gouttes, he said that justice had taken its course following the events of 1988, and that the President of the Republic had subsequently amnestied all those charged with offences in connection with the events. He had acted in the conviction that wounds must be healed and resentment must not be allowed to linger, so that a fresh start could be made.

54. Mr. NEGAMIYE (Burundi) said one member had asked for information on the ethnic distribution of Hutus and Tutsis in the territory of Burundi. Even an expert would find difficulty in answering that question, since the distribution of population in Burundi was not based on ethnic considerations. Burundi consisted of a number of ranges of hills, and there would often be both Hutu and Tutsi families living on the same hill. The same was true of property boundaries: certain areas might be settled chiefly by Hutus, others chiefly by Tutsis, due more to the natural lie of the land than to the intentions of the authorities. There were also a certain number of cases of marriages between different ethnic groups.

55. It had also been asked whether there were distinctions between the two ethnic groups in regard to culture and language. He pointed out that in fact Burundi was a country with a single culture and a single language. When a Hutu met a Tutsi, he would speak to him in a language both could understand; there were no dialects.

56. Burundi's history could not be overlooked if a true picture of its situation was to be formed. In the course of that history, there had been massacres in which the Hutus had suffered, numerically speaking, more than the Tutsis. That was due to the fact that, after 1965, the numbers of Hutu officers in the army had declined. The situation had been somewhat similar with regard to education: at one time, Hutu families had been afraid to send their children to school and university because they might be exposed to danger. However, after 1987, with the advent of the Third Republic, there had been an improvement in the position, and now all ethnic groups were guaranteed equal access to education.

57. The same considerations should be borne in mind with regard to the allocation of posts. Allocation was not based on ethnic criteria, but simply on merit. However, it was a fact that, due to historical considerations, there were more educated persons among the Tutsis than among the Hutus.

58. Where the role of the Church was concerned, the Catholic Church was now recognized and had become fully integrated into the social, political and economic life of the country. In 1989, an agreement had been signed between Church and State designed to encourage the former to play a greater role in education.

59. The CHAIRMAN requested the representative of Burundi to confine himself to answering the specific questions asked: time did not permit extensive historical or sociological explanations. If the representatives preferred, answers could be given in the country's next periodic report.

60. Mr. NEGAMIYE (Burundi), concluding his reply, said that, although his Government was making efforts to improve the situation, some isolated cases of discrimination still occurred. Such cases were duly penalized according to legislation in force.

61. The CHAIRMAN expressed the Committee's appreciation for the responses given by the representatives of Burundi to the questions asked. It would be grateful if, in the next report, extracts from the country's legislation corresponding to specific provisions of articles 2 to 7 of the Convention could be provided, as well as information on the extent to which those articles had been implemented through judicial or administrative measures.

62. He assured the representatives that the Committee wished their country well and would like to see its unity strengthened. It believed that that could best be done by power-sharing between the different elements of the population, and hoped that on the next occasion specific information could be given on the representation of the Hutus in the army, the public service, the UPRONA Party, Parliament and the Government as a result of the reforms undertaken by the Third Republic. The Committee was grateful to the Government of Burundi for its co-operation in maintaining a dialogue with it.

63. Mrs. SADIQ ALI said that Burundi was still in a period of transition and thus the report, as well as the additional information given by its representatives, represented a statement of intent. The next report should help the Committee to judge whether national unity was in fact a reality and whether the Government had the political will to come to grips with the ethnic problem.

64. There were some positive signs, notably the repatriation of refugees and the gradual elimination of institutionalized discrimination in education, which augured well for the future. The measures taken so far represented an important breakthrough towards national reconciliation, but the situation as to political power-sharing was still not very clear, although figures for representation in the UPRONA Party had been promised. Legislation and judicial and administrative measures should have been very specifically highlighted in the context of the Convention, and that had not been done in the report, which amounted to a very vague statement. However, that was perhaps because Burundi citizens themselves, because of the country's state of transition, were not sure what direction the country should be taking.

65. Mr. WOLFRUM suggested that the statement made by the Chairman should be included in the general assessment of the report of Burundi.

It was so agreed.

Mr. Muyovu and Mr. Negamiye (Burundi) withdrew.

Ninth periodic report of Cuba (CERD/C/184/Add.3)

At the invitation of the Chairman, Mr. Martinez and Mrs. Fior (Cuba) took seats at the Committee table.

66. Mr. MARTINEZ (Cuba) said that since his country's report had already been made available to all members of the Committee, and since it was the ninth report in the series, he would make his introduction as brief as possible, so as to allow more time for answering questions.

67. In keeping with the Committee's guidelines, which Cuba had consistently followed, the report gave details in its first, general section, of basic provisions of both the 1976 Constitution and the Penal Code relating to racial discrimination. A new Penal Code had been adopted in 1987, reflecting the conclusions of the Fifth United Nations Congress on Crime Prevention and the Treatment of Offenders, held in Milan in 1985. Those conclusions had recommended a change in attitude towards the treatment of offenders, whereby acts which did not constitute serious offences would be decriminalized. Accordingly, penalties for offences against the right to equality had now been reduced, in order to encourage reintegration of the offender into society.

68. The second part of the report gave full details of measures - some already referred to in previous reports and some new - adopted to give effect to articles 2 to 7 of the Convention, for instance with regard to voting rights and right of association. Cuba's legal system sought to eliminate any vestiges of racial discrimination that it might have inherited from the past, and to create throughout the various sectors of national life a climate in which all differences which might give rise to discrimination were gradually eliminated. Indeed, over the past 33 years Cuba had been endeavouring, as part of a deliberate policy, not only to eliminate social and economic causes of discrimination, but also to encourage a better understanding of the aberration that discrimination represented. Not only had it adopted legal measures, but it had sought to bring about changes in attitude, so that the population would be better able to recognize, and to guard against, manifestations of discrimination.

69. The report also provided facts and figures reflecting the actual situation in Cuba, including a number of socio-economic indicators covering the arts, literature, sport and health. Finally, the report listed a number of activities that had been organized at both the national and international levels as a practical expression of Cuba's uncompromising policy of opposition to all forms of racism and racial discrimination.

70. He drew attention to an error in paragraph 42 of the report, in which the figures for demographic composition of the population added up to a total of 108 per cent instead of 100 per cent. That error would, of course, be rectified.

71. Mr. RHENAN SEGURA, country rapporteur, expressed the Committee's appreciation for the co-operative attitude shown by the Cuban Government in consistently submitting its reports on time and in giving detailed information on the various legislative and administrative measures it had taken to safeguard and promote human rights. He drew attention to the significant

amount of work being carried out by Cuba at the international level in various United Nations bodies dealing with the subject of racial discrimination. Cuba had ratified a number of important instruments on the subject, not only the Convention with which the Committee was concerned, but also, for example, the International Convention on the Suppression and Punishment of the Crime of Apartheid.

72. It was scarcely necessary to say that the report was a good one, and supplied a considerable amount of information and statistical data, notably on demographic composition, requested at the time of the previous report. It also supplied a wealth of data on education, health, culture, sport and economic indicators, fields in which Cuba had made considerable progress.

73. He would like to know whether offences against racial equality were included in the new Penal Code referred to in paragraph 8 of the report, and what were the penalties for such offences under article 295 of that Code. He noted that on earlier occasions the representative of Cuba had claimed that he was unable to provide information on demographic composition because no such information was available: however, paragraph 2 of the present report did in fact supply figures, apparently based on censuses carried out in 1981 and 1987. He would appreciate an explanation of that apparent contradiction.

74. When a group of human rights experts had visited Cuba in 1989, it had found that there were a large number of negroes among the prison population. The Vice-President had told the group that the number of negroes in prison was disproportionate to their numbers in relation to the population as a whole because they tended to belong to the poorer strata of society. Had anything been done over the past two years to improve that situation, both generally and with regard to the prison population? In that connection, it would be useful to have information on the demographic composition of the population in so far as economic resources were concerned. Specifically, he would appreciate more details on any programmes that were being carried out to "promote" certain sectors of the population, as was indicated in paragraph 25 of the report, and how such programmes benefited the negro population in particular.

75. The report provided somewhat meagre information in relation to article 5 of the Convention. He would like to know, in connection with article 5 (d)(i), whether there were any restrictions on freedom of movement in Cuba. What was the purpose of the so-called "captive villages" - if they still existed - in the Pinar del Rio region, Briones, Montoto and Lopez Peña? He would also like to know whether the so-called identity card and registration of residence regulations (Act No. 1,278 of 1974) were still in force.

76. With regard to article 5 (d)(ii), he would like to ask the Cuban representative the question that had been put to it on previous occasions, namely, whether there were still restrictions on entering and leaving the country, restrictions which would contravene both the Convention and article 13 (2) of the Universal Declaration of Human Rights. In particular, he would like to know what was meant by article 32 of the Cuban Constitution, which stated that citizenship could be forfeited for acting "against the

people of Cuba and its institutions". Was there any procedure for pronouncing a verdict on such forfeiture of citizenship and what remedy was available?

77. Where the right to own property was concerned, he would like to have a more detailed explanation of what was stated in paragraph 45 of the report, particularly regarding any limitations on that right.

78. In relation to article 5 (vii) and (viii), covering the right to freedom of thought, conscience and religion and the right to freedom of opinion and expression, he would like to know whether any case of religious discrimination had arisen. In particular, what was the precise scope of articles 41 and 54 of the Cuban Constitution, which referred to faith or religious beliefs which "were in opposition to the Revolution"? If freedom of conscience and religion were guaranteed, he could not see how acts undertaken for religious reasons could be found to be in conflict with the Revolution. What restrictions were imposed on religious practice by the Office for Religious Affairs? It had been reported that, despite improvements in relations between Church and State, cases of discrimination against believers still occurred: what type of discrimination was involved?

79. Where freedom of opinion and expression were concerned, there had been complaints in recent years that the press, radio and television were controlled by the Communist Party, with the result that all the media expressed the same views and never deviated from the official line. Had that situation changed at all in recent months?

80. Regarding the right of assembly and association, he understood that under the Associations Act non-governmental organizations had repeatedly been refused recognition and that such organizations had been subjected to harsh and even defamatory treatment. In that connection, what was the scope of article 103 of the Penal Code, which governed any expressions of opinion, oral or written, by non-governmental organizations? What options were available for those who wished to exercise their right of association, and what were the requirements for such rights to be recognized under the Associations Act?

81. Concerning the right to health, he would like to know how Cuba dealt with the problem of AIDS victims, since he understood that they were quarantined against their will in a special penal settlement, Rancho Boyeros, in Finca los Cocos. What kind of assistance was given to those AIDS victims?

82. In the field of education, he was greatly surprised to note that the Cuban education system did not provide for courses in human rights, since paragraph 50 of the report claimed that the Cuban Constitution guaranteed full enjoyment of human rights and respect for human dignity by all citizens. Why were such courses not offered? Did the history curriculum, both at school and university, include the study of different ethnic groups and cultures? What steps were taken to ensure that all population groups, especially negroes, had access to all aspects of cultural life?

The meeting rose at 1.05 p.m.

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Thirty-ninth session

SUMMARY RECORD OF THE 895th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 7 March 1991, at 3 p.m.

Chairman: Mr. LAMPTEY

CONTENTS

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Ninth periodic report of Cuba (*concluded*)

Third and fourth periodic reports of Portugal

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Ninth periodic report of Cuba (CERD/C/184/Add.3) (concluded)

At the invitation of the Chairman, Mr. Alfonso Martínez (Cuba) took a seat at the Committee table.

1. Mr. WOLFRUM took note of the information on the demographic composition of the population which had been provided in paragraph 42 of the report, but regretted that neither the written report nor the oral introduction had given many details on the social status of each group. In a previous report, it had been stated that the Black population was to a large extent socially disadvantaged. What was the current situation? Moreover, with regard to the participation of that group in public and political life, the representative of Cuba had noted at the Committee's preceding session that not all groups were represented in the Party (CERD/C/SR.845, para. 77). Was that still true? At that same meeting, the representative of Cuba had said that the number of Black prisoners was too high in relation to the rest of the population (para. 81). Had the reform of the Penal Code had any effect on that state of affairs? He would like to have detailed information on Cuba's educational system, the relative importance of the three levels of education and the proportion of Blacks at each level.

2. Mr. VIDAS struck a warning note about the wording of the first sentence of paragraph 3 of the report, which characterized racial discrimination as a vestige of the past. In his view, no society was completely free of racial discrimination, not even that of Cuba after the Revolution. In connection with the ethnic composition of Cuban society described in paragraph 42 of the report, it would be useful to have figures indicating the share of each of the main ethnic groups in the administration, in education and in law-enforcement activities. If such information was not currently available, it should be included in Cuba's next report.

3. Mr. SONG Shuhua noted that, in Cuba, any person who considered himself to be a victim of acts of racial discrimination could appeal to the authorities (para. 48 of the report). Did the injured party also have the right to compensation? If an official committed a discriminatory act (para. 17), which penalties were applicable to him? There seemed to be some contradiction between the elimination of "any form of racial discrimination ... as a vestige of the old society" (para. 3) and the statements made in paragraphs 35 and 47. Had racial discrimination disappeared completely or did certain types of racial discrimination still exist as a result of the different status of the various ethnic groups?

4. Mr. de GOUTTES said that decriminalization, as described in paragraph 12 of the report, was an interesting experiment that many countries were currently trying out. In general, however, a distinction was drawn between serious offences, which must continue to be fully covered by the system of criminal law, and less serious offences, which could be decriminalized, and it was open to question whether racial discrimination came within the latter

category. Article 295 of the Cuban Penal Code reduced the maximum term of imprisonment applicable to that offence from three years to two (paras. 11 and 12 of the report). Was such a reduction justified? Had all the offences covered by the Cuban criminal law system been decriminalized in the same way? The efforts described in paragraph 21 of the report to increase awareness of legal language for educational purposes were commendable and he would like to know what results had been achieved. It had also been stated that apartheid was a serious offence carrying severe penalties (para. 27). What were those penalties?

5. Referring to paragraphs 35, 38 and 47 of the report, according to which the socialist order ruled out any act of racial discrimination, he said he agreed with Mr. Vidas that such a statement was not justified, as had already been stressed during the consideration of the periodic report of the Ukrainian Soviet Socialist Republic.

6. Mr. ALFONSO MARTINEZ (Cuba) said it seemed to him that some of the questions that had been asked went beyond the Committee's mandate. For example, the questions concerning the right to leave the country and to return to it, the fate of AIDS patients and the right to own property did not appear to have any bearing on racial discrimination. Perhaps the members of the Committee were thinking of the discrimination that might be practised, in connection with each of those issues, against particular individuals on account of their race.

7. Replying to the questions asked by Mr. Rhenan Segura, he explained that, in the case of offences against racial equality, proceedings were brought in accordance with the general rules indicated in the Code of Criminal Procedure. There was no special court. He was, however, not in a position to state whether such proceedings had already been brought under the new Penal Code. That question would be transmitted to the Cuban authorities and the reply would be given in the next report.

8. As far as the number of prisoners of any specific race being held in Cuban prisons was concerned, he explained that the considerable proportion of Blacks among Cuba's prison population was sometimes due to the fact that Blacks were particularly numerous in a given area and, more broadly, to the fact that Blacks were particularly numerous among the poorest sectors of the population. Cuba had not been able to eliminate, in 30 years, the results of decades of foreign racist domination. Furthermore, in the past, not only Blacks but also all the disadvantaged classes had been deprived of the educational and cultural facilities needed to move up the social ladder.

9. Since 1959, two things had changed: access to education had been guaranteed to everyone, with the result that everyone had equal job opportunities, and society had become aware that racial discrimination was a scourge devoid of any scientific basis. That did not mean that there were no manifestations of racial discrimination in Cuba, but at least such manifestations were regarded as disgraceful, rejected by the public's social conscience, and punished by the criminal legislation.

10. He was not in a position to give information on the economic status of the different ethnic groups. That information would be included in Cuba's

next report. The multidisciplinary programmes referred to in paragraph 25 of the report were intended for certain population groups, but the term "groups" must not be understood to mean "racial groups". The target groups were those which had not yet benefited from the social achievements of the Revolution. The community therefore had to assist them if standards of living were to be made equal.

11. In connection with article 5 of the Convention, it had been asked what restrictions there were on freedom of movement in Cuba and what the purpose of the so-called "captive villages" was. Freedom of movement in Cuba was total and everyone could freely change his residence, either temporarily or permanently. The term "captive villages" was an imported one. In 1960 and 1961, in the country's central provinces, there had been pockets of insurgent and counter-revolutionary activities financed and armed by the United States. In some areas of those provinces, the inhabitants had been evacuated to other parts of Cuba, both for their own personal safety and for reasons of State security. When the troubles had ended, some of those persons had returned to their area of origin and others had stayed where they were, but there was now complete freedom to enter and leave the areas in question.

12. The universal obligation to possess an identity card and to record any change of residence of more than six months in the register of addresses was in no way a manifestation of racial discrimination. All citizens were bound by it, regardless of the group to which they belonged. Moreover, regulations of that kind were also found in other countries and in representative democracies such as Spain and Argentina. Furthermore, the regulations and procedures to be followed in order to leave Cuba, whether temporarily or permanently, were in no way discriminatory. They would be discriminatory if they differed according to the racial group to which the applicant belonged. There again, the same kind of regulation existed in countries other than Cuba.

13. It must also be stated that the right to leave any country recognized in article 13 of the Universal Declaration of Human Rights had two aspects. It was not sufficient to recognize a right in abstract terms; it also had to be possible to exercise it in practice. The Cuban Government imposed no limitation on the right to leave Cuba. However, in order to be able to exercise that right in practice, it was necessary for another country to grant an entry visa and residence permit to a Cuban who wished to leave Cuba. In fact, most Cubans who would like to leave Cuba would want to go to Miami. However, in order to do so they needed an entry visa into the United States. Under a protocol signed in 1987, the United States could admit up to 20,000 Cubans every year, but that maximum was never attained. The highest figure had been 8,000, recorded in 1988. Since then, it had always been lower. No racial discrimination was involved in that respect, since the situation was the same for all Cuban citizens.

14. With regard to the right to property, he explained that Cuba recognized all conceivable types of property, including individual, collective and cooperative property. The only prohibition related to the establishment of capitalistic enterprises - in other words, enterprises based on a market economy.

15. As to the right to freedom of expression, which was separate from freedom of opinion, Cuban legislation was comparable to that of all other countries in the world and applied to all citizens without distinction as to race. With regard to freedom of religion, which was quite different from freedom of conscience, which posed no problem in Cuba, Fidel Castro himself had acknowledged that problems of religious discrimination had existed in Cuba. However, the phenomenon must be placed in Cuba's particular historical context. Being the last country to have freed itself from Spanish tutelage, Cuba had waged a war of independence marked by open collusion between the Spanish colonial administration and the official church, which had then been the Apostolic Roman Catholic Church. Later, in 1959, the revolutionary movement had seen the representatives of the Cuban Catholic Church and foreigners, mostly Spaniards with close links to the Franco regime, side with the privileged sectors of Cuban society. However, thanks to an intelligent policy in relations between Cuba and the Vatican, tension with the clergy was now a thing of the past, so much so that consideration was being given to the possibility that, one day, persons professing a religion might be admitted as members of the Cuban Communist party.

16. As far as freedom of peaceful assembly and association was concerned, he pointed out that, in all countries, there were regulations governing the organization of public demonstrations. The relevant articles of the appropriate municipal by-law and of the Associations Act, in particular, were applicable to all citizens without distinction as to race.

17. In connection with the concern expressed by Mr. Rhenan Segura about the lack of theoretical training in human rights, he pointed out that, in December 1990, he had given a university-level course on human rights under United Nations auspices at the Higher Institute of International Relations. The course had been open to everyone and others would be organized in future.

18. With regard to the request made by Mr. de Gouttes for further information concerning punishment of the crime of apartheid in Cuba, he explained that article 120 of the Penal Code provided for the imposition of the most severe penalty - 10 to 20 years' imprisonment or death - on any person found guilty of instituting or maintaining the domination of one racial group over another.

19. Mr. de Gouttes had also asked why the maximum penalty for the offence of racial discrimination had been reduced from three to two years' imprisonment. He explained that that measure was not so much the result of any real decriminalization as of a general tendency to reduce maximum penalties and of a sharp rise in anti-racist social feeling which had led to racism having less of an impact on Cuban society.

20. Referring to Mr. Song Shuhua's question concerning socialist legality (art. 295 of the Penal Code), he explained that anyone who had grounds to complain that his right to equality had been violated for reasons of race was able to institute criminal proceedings and was also entitled to bring a civil suit for damages.

21. Endorsing the moderately worded observation made by Mr. Vidas, he recognized that it was impossible for all vestiges of the scourge of racial discrimination to have totally disappeared from the country in only one

generation. Nevertheless, the offence was rejected by society, its roots had been extirpated and it was inconceivable that it could remain unpunished, especially when the authorities were implicated.

22. With regard to the right to education, he stressed the fact that children of all races and all sectors of society had access to education on a footing of equality, something that had been inconceivable before 1959.

23. Mr. Rhenan Segura had requested further information regarding the concept of loss of citizenship (art. 32 of the Cuban Constitution). The concept was universal. In Cuba, anyone who lost his citizenship lost the rights attaching to it, including the right to protection by the State. In Cuba, loss of citizenship was generally associated with the acquisition of another nationality, in which case there was a transfer of jurisdiction. The competent organ for pronouncing loss of citizenship was the Council of State, which took its decisions by decree. However, that procedure was rare and was used only when the measure was applied against persons who engaged in activities prejudicial to the Cuban people and its institutions.

24. The CHAIRMAN, speaking as a member of the Committee, pointed out that article 5 of the Convention contained a non-exhaustive list of the rights guaranteed. It was for the Human Rights Committee to ensure that those rights were provided for in the legislation of the State party and for the Committee on the Elimination of Racial Discrimination to ensure that, when they were provided for, they were exercised on a basis of equality. However, when the report of a State party to the Convention did not mention certain rights expressly, the Committee on the Elimination of Racial Discrimination could legitimately ask the representatives of the State party about the existence of those rights and assure itself that they really were exercised in conformity with the Convention.

25. Mr. YUTZIS said that relations between Church and State had made hardly any progress since the time when the changes which had led Cuba to adopt its present socio-economic model had occurred. As Mr. Fidel Castro had himself acknowledged, progress had not been possible for historical reasons. Nevertheless, certain States that had chosen a similar course were now in the process of reassessing their economic, political and social models and were adopting clearly more advanced positions in that regard, since, at the level of the State apparatus, they no longer made any distinction among individuals on religious or ethnic grounds. He would therefore like to know when Cuba, whose political system had not been recast, would be able to admit persons who openly professed a religion as members of the Party.

26. Mr. ALFONSO MARTINEZ (Cuba) said that there was a fundamental difference between the Cuban Government and the Cuban Communist Party. The latter was an organ for guiding the country's social life and had no decision-making powers. It was based on the principles of Marxism-Leninism and historical materialism and it was questionable how far persons whose thinking was not based on that philosophy could apply to become members of it.

27. As far as the State apparatus was concerned, no one was prohibited from participating in the country's political life on account of his religious beliefs. In any case, religious opinion in Cuba was quite different from

what it was in Poland, Hungary, Bulgaria or Nicaragua, for example, and the experiences of radically different societies, however valid they might be, could not be transposed to Cuba.

28. Mr. YUTZIS said that it was his understanding that the Cuban Communist Party was a governing organ whose views must not, and could not, conflict with the specific policies pursued by other State organs. As long as that model continued to exist, the Cuban Communist Party would be something more than an entity called upon merely to issue guidelines. It would still have decision-making powers and persons who openly professed a religious faith would be exposed to the danger of discrimination.

29. Mr. de GOUTTES, referring again to the "decriminalization" of acts of racial discrimination in Cuba, noted that the representative of Cuba had stated that apartheid was nevertheless punishable by the harshest penalties, which could be up to 10 or 20 years' imprisonment and even death. The representative of Cuba had justified decriminalization by the fact that acts of racial discrimination were rejected by the Cuban social conscience, but that was also certainly so with apartheid. Why then were the consequences in the two cases different?

30. Mr. ALFONSO MARTINEZ (Cuba) replied that, in the Cuban social conscience, there was a difference between those two types of offence.

31. The CHAIRMAN thanked the Cuban delegation and expressed satisfaction at Cuba's continuing dialogue with the Committee. He hoped that Cuba's next report would contain replies to the questions that had still not been answered.

Mr. Alfonso Martínez (Cuba) withdrew.

32. The CHAIRMAN invited the members of the Committee to assess the report under consideration and the replies of the Cuban representative.

33. Mr. WOLFRUM said that, although the Cuban delegation had supplied a great deal of information, only incomplete replies had been given to certain questions. In particular, his own question regarding the percentage of Blacks in various sectors should be answered in Cuba's next report. The Committee needed further information on that point, as on certain others.

34. Mr. RHENAN SEGURA agreed with Mr. Wolfrum that it would be useful to have further information.

35. The CHAIRMAN, speaking as a member of the Committee, said that he had been able to ascertain that there was no discrimination based on colour in Cuba. The country had been notoriously racist before the Cuban Revolution, of which the elimination of racism had been one of the major objectives. Posts were filled on the basis of merit and not according to whether the candidate was White or Black. It would be regrettable if the Committee were to make a wrong assessment in that respect.

36. Mr. LECHUGA HEVIA said that he personally had been a member of a mission which the Commission on Human Rights had sent to Cuba. The mission had visited a prison where it had been able to ascertain that 70 to 80 per cent of the prisoners were Blacks. On the other hand, it had subsequently been pointed out to him at the Ministry of the Interior that 50 per cent of the law students at the University of Havana were Blacks.

37. Mr. de GOUTTES expressed his perplexity, as he had done in the case of the Ukrainian SSR, about the affirmation that there could be no racism in a socialist political and social order. It accordingly seemed difficult, having regard to the Committee's criteria, to accept without reservation what was stated in paragraphs 35 and 47 of the report under consideration.

38. Mr. FERRERO COSTA, referring to Mr. Wolfrum's comments, pointed out that human rights problems existed in Cuba, since the human rights situation in that country was on the agenda of the Commission on Human Rights. However, with regard to the Committee's main concern, it should be acknowledged that active steps were being taken to combat discrimination in Cuba. No specific case of discrimination had been reported to the members of the Committee, except perhaps with regard to the prison population. In particular, there was no known case of racial discrimination in matters of health and education. The Committee should therefore continue to be cautious and fair and not give a negative picture of the situation with regard to racial discrimination in Cuba.

39. Mr. WOLFRUM pointed out that he had merely asked for more information. For example, an important piece of information had just been given by Mr. Lechuga Hevia, who had stated that 50 per cent of the law students at the University of Havana were Blacks. That information should, however, have been given by the Cuban delegation. The Committee still needed more data and figures.

40. Mr. RESHETOV said that, in his opinion, the campaign against racial discrimination was evolving satisfactorily in Cuba, as would certainly be confirmed by the further information to be received in future. Mr. de Gouttes had referred to an affirmation contained in the tenth periodic report of the Ukrainian SSR, but the Ukrainian delegation had clearly indicated that the affirmation in question was no longer valid and that the Ukrainian SSR now took a different view.

41. Mr. YUTZIS said he considered that the Committee ought to adopt a positive attitude towards Cuba, which submitted its periodic reports on time and maintained a constructive dialogue with the Committee. Cuba should merely be requested to supply additional information in its next report; from a practical standpoint, it would be advisable to draw up a complete list of the questions which the Committee would like to see answered. He, too, took the view that no social model excluded the possibility of racial discrimination.

42. The CHAIRMAN said that a distinction had to be made between the assessment of a report and requests for additional information. Members of the Committee ought to have presented their requests for information when the Cuban representative had been present. He announced that consideration of Cuba's ninth periodic report (CERD/C/184/Add.3) was thus concluded.

Third and fourth periodic reports of Portugal (CERD/C/179/Add.2)

At the invitation of the Chairman, Mr. Maciel, Mrs. Santos Pais, Mr. Andrade and Mr. Pereira Gomes (Portugal) took seats at the Committee table.

43. Mr. MACIEL (Portugal) said that his country's determination to prevent and condemn racial discrimination found its basic expression in the provisions of its Constitution, under which human rights and fundamental freedoms had to be effectively respected and recognized. Those provisions were applied directly by the courts and were binding upon any public or private body. Moreover, the constitutional and legal framework for human rights and fundamental freedoms had been designed as an open system to be interpreted in the light of the provisions of the Universal Declaration of Human Rights.

44. Portugal had shown its spirit of openness in human rights matters by ratifying a number of international instruments, which were directly applicable and took precedence over internal law. All persons subject to Portuguese jurisdiction, regardless of their nationality, could assert their rights under those instruments before the appropriate international bodies, including the European Commission and Court of Human Rights and the United Nations Human Rights Committee. The same would soon be true in the case of the Committee on the Elimination of Racial Discrimination, since Portugal was planning to make the declaration under article 14 of the Convention.

45. The Portuguese Constitution prohibited associations having a fascist ideology or advocating colonialism or racism. Under the Penal Code, the dissemination of ideas inciting people to racial discrimination and encouraging them to participate in any kind of racist activity was a punishable offence. There were aggravating circumstances if an offence was inspired by racial or religious hatred. Thus, criminal proceedings had been instituted against the "skinhead" movement, which had recently revealed its nature through violence and a murder committed in Lisbon; the decision of the court of first instance would be handed down shortly. The Prosecutor General of the Republic had called for an exhaustive report on the movement and on any connections it might have with other national or foreign individuals or groups suspected of similar activities.

46. New arrangements for access to the courts recognized the right to information and to legal consultation and provided for legal aid for Portuguese nationals and foreigners who did not have sufficient financial resources. In addition, foreigners had been granted the right to vote in local elections under the latest revision of the Constitution.

47. Since the Committee, during its review of Portugal's second periodic report, had shown an interest in the education and integration of ethnic minorities, the report under consideration contained some information on that subject. Mention should be made of the initiatives that had been taken in certain schools to help pupils of foreign origin facing difficulties in adaptation by providing them with the support of teachers speaking their own mother tongue. Furthermore, a project called "The intercultural role of the school", in which 24 schools were participating, was designed to combat

academic failure and to help pupils experiencing problems of cultural adaptation to learn. A new statute for foreign assistant teachers in primary and secondary schools had just been adopted. Access to Portuguese higher education for students from Portuguese-speaking countries in Africa was also being promoted through social and logistical support in the form of housing, dining room facilities and supplementary tuition.

48. In view of the important role played by the media and by advertising, the Broadcasting Act mentioned in the report contained a provision for the promotion of programmes for cultural minorities. The recent Television Act prohibited any programme inciting persons to commit violence or acts contrary to human rights and fundamental freedoms. One of the aims of Portuguese television was to encourage cultural contacts between Portuguese and foreigners. The recent Advertising Code explicitly prohibited any message expressing any discriminatory idea based on race or sex.

49. The reports submitted by Portugal to various United Nations bodies were published by the Ministry of Justice in its Bulletin of Documentation and Comparative Law. The previous report submitted by Portugal to the Committee had been published, together with the texts of the summary records of the meetings at which it had been considered. Such initiatives helped to enhance public awareness, particularly among jurists.

50. The "Citizen and Justice" campaign launched by the Ministry of Justice in 1990 was also designed to introduce transparency in the administration of justice, to facilitate access to the courts through the provision of public information and guidance services and to increase confidence in the Portuguese judicial system.

51. The CHAIRMAN thanked the representative of Portugal for introducing his country's fourth periodic report and invited Mr. Ferrero Costa to analyse it.

52. Mr. FERRERO COSTA, country rapporteur, congratulated the Portuguese Government on having drawn up its fourth periodic report in accordance with the Committee's revised guidelines (CERD/C/70/Rev.1). He pointed out that the improved arrangements for the protection of human rights in general and for the implementation of the Convention in particular largely resulted from the adoption, in August 1989, of the second constitutional reform, which was dealt with extensively in the report.

53. With regard to the demographic composition of the population, considered in paragraphs 7 to 19, he regretted the absence of information on the distribution of Portuguese nationals by national or ethnic origin. The table on page 2 was concerned only with foreign residents. Since it was stated in paragraph 15, that in 1974-1975, approximately 1 million persons - in other words, almost 10 per cent of the total population - had arrived in Portugal, it would be interesting to know where they had come from.

54. It would be helpful if, in accordance with the consolidated guidelines for the initial part of the reports of States parties (HRI/1991/1), the Portuguese Government could include, in its next report, various social, economic and cultural indicators such as per capita income, and unemployment

and literacy rates, as well as information on the mother tongue of the inhabitants, endeavouring to supply that information separately for each ethnic or national minority.

55. Furthermore, the table on page 2 showed that, at the end of 1988, there had been 94,453 foreign residents, of whom 42.6 per cent were Africans. However, it was stated in paragraph 11 that, at the end of 1988, only 4,675 residence permits had been issued. Must it be concluded that almost 90,000 foreigners had not received a residence permit? What was their status, particularly with regard to the right to work? What were the criteria governing the issue of a residence permit? Could the Portuguese delegation explain what was meant by the 118 passports issued to foreigners, as mentioned in paragraph 11? On the basis of what criteria and to whom were those passports issued? With regard to applications for asylum (paras. 12 to 14 of the report), for what reasons was an application accepted or rejected? It was known what criteria were taken into account when applications for the retention or acquisition of Portuguese nationality were considered (para. 17 of the report). However, in order to ascertain whether that procedure gave rise to any discrimination, it would be helpful to know the national or ethnic origin of the 6,774 persons whose applications had been rejected, as well as the reasons for rejection. He would also like to know the status, including the legal status, of the population of Portugal's two overseas territories and whether specific provisions to give effect to the Convention had been introduced in the territories.

56. Portugal's Constitution provided that the country "is committed to strengthening its European identity" (para. 32 of the report). Were persons originating from outside Europe and the cultural minorities mentioned at the end of paragraph 254 of the report in any way affected by the pursuit of that objective? It would also be desirable to know who had access to the public information and guidance services in courts and judicial offices (para. 44 of the report) and how many of those services had been set up so far. Paragraph 49 of the report was concerned with a Commission for the Promotion of Human Rights and the Elimination of Inequality in Education. Was the jurisdiction of that Commission limited to education and, if so, was there any other commission with broader powers responsible, in particular, for protecting the right not to be discriminated against on racial grounds?

57. He was glad to note that the Constitutional Court had declared unconstitutional some of the provisions of the General Service Regulations of the National Republican Guard because they discriminated against Gypsies (paras. 50 to 54 of the report) and asked the Portuguese delegation to be kind enough to provide the Committee with the text of the decision and with information on its legal effects and on the special and concrete measures taken by the Government in conformity with article 2, paragraph 2, of the Convention.

58. With regard to apartheid (art. 3 of the Convention), he considered that, by maintaining diplomatic and trade relations with South Africa, Portugal was contravening the spirit of the Convention. He would like to know whether, between 1986 and 1988 and between 1989 and 1990, trade and investment ties between the two countries had increased.

59. As far as the implementation of article 4 of the Convention was concerned (paras. 67 to 82 of the report), he would like to know how the Prosecutor General of the Republic had complied with the Press Council's request referred to in paragraphs 73 and 74 of the report.

60. He would also like to have some detailed information on the criminal proceedings that had been initiated against the "skinheads" (paras. 75 to 82 of the report) and on the penalties to which the offenders were liable.

61. He regretted to note that, in paragraphs 83 to 169 on article 5 of the Convention, in which a large number of rights were set forth, there was no indication of what practical measures had been taken to prevent persons from being subjected to racial discrimination in the exercise of those rights.

62. The same was true of paragraphs 170 to 182 on article 6 of the Convention. States parties should not be content with indicating the legislative and administrative arrangements which they had made; they should also indicate what specific problems were encountered in their practical implementation. For example, had persons who considered themselves to be victims of racial discrimination instituted any legal proceedings and had those responsible been punished?

63. In connection with article 6 of the Convention, he was glad to note that the Portuguese Government was planning to make the declaration provided for in article 14 of the Convention.

64. With regard to article 7 of the Convention (paras. 183 to 257 of the report), he would like to know what education in Portugal sought to achieve. Was it the strengthening of the European identity and the Portuguese identity and what was meant by those expressions? Were the specific characteristics of cultural minorities and their members recognized, in view of what was stated in paragraphs 186, 191 (d), 204, 211, 248 (a) and 254 (d)? Were any measures being taken to protect the cultural identity of minorities and resident foreigners? What were the inequalities in regional and local development mentioned in paragraph 191 (d)? Were some national or ethnic groups more affected than others by illiteracy (para. 198 of the report)? As far as Gypsies were concerned, how were the measures mentioned in paragraphs 212 to 217 of the report applied and had any practical steps been taken to assist the Gypsy minority?

65. In conclusion, he expressed regret that the International Convention on the Elimination of All Forms of Racial Discrimination was not included among the human rights instruments mentioned in the report.

The meeting rose at 6.05 p.m.

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Thirty-ninth session

SUMMARY RECORD OF THE 896th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 8 March 1993, at 10 a.m.

Chairman: Mr. SHAHI

later: Mr. FERRERO COSTA

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Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

Third and fourth periodic reports of Portugal (concluded)

Eighth to eleventh periodic reports of Uruguay

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Third and fourth periodic reports of Portugal (CERD/C/179/Add.2) (concluded)

At the invitation of the Chairman, Mr. Maciel, Mr. Gomez and Mrs. Santos Pais (Portugal) took seats at the Committee table.

1. Mr. WOLFRUM welcomed the positive attitude of the Portuguese authorities towards their reporting obligations as reflected in the report, which contained a vast amount of information relevant to the work of the Committee. The basis for the prevention of racial discrimination in Portugal was to be found in article 13 of the Portuguese Constitution. Article 15, under which aliens had the same rights as Portuguese citizens except in the case of political rights, was also relevant.

2. Paragraph 46 of the report indicated that aliens and stateless persons lawfully residing in Portugal enjoyed the right to legal protection, as did non-resident aliens who were nationals of countries where a similar legal provision applied to Portuguese nationals. He would be interested to learn the constitutional basis for the restriction with regard to non-resident aliens, as article 20 of the Constitution did not provide for such a restriction. In that connection, it would be interesting to know whether an individual could address the Constitutional Court directly. What was the complaint procedure for individuals? What means were available to an individual who argued that a particular act was in violation of a fundamental right guaranteed by the Constitution? In particular, he would like to know how the cases relating to the General Service Regulations of the National Republican Guard and to gypsy tents, referred to in paragraphs 50-54 of the report, had been brought to the Constitutional Court.

3. He would also welcome further information on the position of the Provedor de Justica (Ombudsman) and the relationship between him and the Court, and information on demographic composition in the next report.

4. Mr. RESHETOV considered that not enough information on the demographic composition of the population had been provided. Such information was of great importance for the proper identification and evaluation of a number of situations which might exist in Portugal. The report stressed Portugal's great interest in preserving the Portuguese language, including among Portuguese citizens who lived abroad; the lack of adequate demographic information made it impossible to evaluate the significance of that interest. In similar fashion, the problem of the education of gypsy children could not be properly evaluated without information on the statistical ratio of gypsies to the total population.

5. On the question of the implementation of international conventions in Portugal, paragraph 26 referred to the automatic incorporation of duly ratified or approved conventions into the Portuguese legal system by virtue of the fact that they were internationally binding upon Portugal. That comment

applied to conventions which imposed international obligations on Portugal. What, however, was the situation in the case of instruments which did not place legal obligations on the country?

6. He would also like to know whether the penalties for the propagation of ideas constituting incitement to racial discrimination and racist activities, cited in paragraph 68, were in fact imposed in judicial practice. Did the action specified in paragraph 74 represent implementation of the provisions described in paragraph 68?

7. He agreed with those members who had voiced criticism to the effect that the discussion on article 5 of the Convention occupied a disproportionately large part of the report as it dealt with issues in a general way without relating them directly to the legislative concerns of the Committee. Earlier reports had been the subject of similar criticism. On the question of language teaching, he would like to know what languages other than Portuguese were taught and the extent of such education.

8. He invited the representative of Portugal to explain how the concept of the "European universalist tradition", mentioned in paragraph 271, would apply in the case of gypsy children. His own impression was that gypsy children would be given the opportunity to receive education in ordinary Portuguese schools. In paragraph 217, however, the question of the study of gypsy history and culture was addressed. Were measures being taken to assimilate gypsies into the existing system or were they given educational opportunities in their own language and thus opportunities to retain their own identity?

9. Mr. VIDAS noted from the statistics given in paragraph 18 that out of 43,537 applications for Portuguese nationality, 31,398 had been dealt with. He would like to know the situation of the remaining 12,139 persons whose applications had not been dealt with.

10. With reference to paragraph 54 of the report, he would like to know whether article 81, paragraph 2, of the Regulations, which had been declared unconstitutional, had been deleted from the regulations or modified in any way. In connection with paragraph 80 of the report, he asked whether the results of the inquiry into the "skinheads" were yet available. Full information might be included in Portugal's next report. The problem was important and went well beyond Portugal.

11. He would like to hear about action taken by the Ministry of Education to ensure the motivation of gypsy families with regard to their children's schooling. It would be important to analyse the nature and effectiveness of the measures taken, bearing in mind the special situation of that group. The problem existed not only in Portugal but also elsewhere.

12. Mr. de GOUTTES said that one of the report's good points was that it provided a general outline of Portuguese legislation relevant to article 5 of the Convention and its implementation. Another was that it reflected the substantial reforms which had been effected in certain areas, notably the legislation relating to access to justice of all, including aliens and

stateless persons. The provisions of the journalist's code of ethics, described in paragraph 256 of the report, also represented an interesting development.

13. He would welcome information, in tabular form in Portugal's next report, on sentences passed in racism cases. The Committee would also be interested to learn the conclusions reached in the report under preparation by the Prosecutor-General on racist groups such as skinheads. With reference to paragraph 71 of the report, he would like to know whether any penalties had been imposed on parliamentarians for participating in Fascist-oriented organizations. Were such penalties also imposed in the case of racist organizations?

14. Mrs. SADIQ ALI said that, according to paragraphs 47 and 48 of the report, the State owned both television channels and two out of the three national radio stations. That meant that the Government wielded considerable influence over the broadcast media through personnel appointments and programmes. She would like to know what role the Government played in terms of article 7 of the Convention and how it ensured objective treatment of news, particularly since opposition parties had charged that the State-owned television and radio ignored or distorted opposition views and activities. The State subsidized the press indirectly and that could also lead to curbs on news which was not to the Government's liking. She would also like to know whether there was any move towards privatization.

15. In paragraph 73 it was stated that the Press Council had, in July 1988, issued a recommendation in connection with a series of newspaper articles which, in its opinion, had contained disparaging statements based on race, colour or ethnic origin, thus constituting incitement to racial hatred. It had asked the Office of the Prosecutor-General to carry out an investigation of those acts and that request had been granted. She would like to know the results of the investigation and whether any action had been taken.

16. She would likewise be interested to learn what action had been taken against skinheads in Lisbon and Porto, particularly the one involved with a political party. Were skinheads banned in the light of article 4 (b) of the Convention?

17. In paragraph 172 mention was made of the Ombudsman. She would be interested to learn how many complaints the Ombudsman had received in the course of the previous year, what was the nature of those complaints and whether they had concerned bureaucratic maladministration.

18. It would also be of interest to learn the literacy rate of Angolans, Cape Verdeans and Mozambicans and their percentage of employment. Did they have housing difficulties and did the State look after their health requirements? What was the status of the 50,000 or so Goans and the large Ismaili community, many of whom had come to Portugal from Africa. Had the Indo-Portuguese treaty signed in December 1974 regularized their position?

19. Amnesty International had reported that the authorities had practised ill-treatment to obtain confessions from criminal suspects. She would welcome information on that question and on whether any action had been taken.

20. Mr. BANTON, referring to the question of discrimination on grounds of colour, said that he knew no society where there were fewer grounds for complaints on that score than Portugal. Portugal had a wider range of complexions than almost any other country and less attention was paid to colour than elsewhere. In other countries a light complexion might imply a higher social status and employers might prefer individuals with light complexions to perform jobs involving contact with the public. If a person believed he was a victim of such discrimination in Portugal, what remedies were available? Were persons who believed that they had been victims of such discrimination aware of any remedies available to them?

21. Mr. YUTZIS welcomed the report both for the volume of its substantive content and because it provided evidence of Portugal's obvious wish to continue dialogue with the Committee. The report was also noteworthy for its demonstration of the changes in terms of the recognition and implementation of human rights which had taken place in Portugal since the downfall of the Salazar regime.

22. The terminology used in the report seemed, however, to require clarification in certain respects. Paragraph 22, for example, stated that "Portugal is committed to strengthening its European identity and the activities of European States". The same concept, as applicable in the field of education throughout Portuguese territory, was taken up in paragraph 191 (a) and amplified by the phrase "through development of awareness of the Portuguese cultural heritage within the context of the European universalist tradition". Again on the subject of education, paragraph 211 reiterated the concept with particular reference to the education of gypsy children. Such structural evaluation seemed to relate to the particular political and economic model and lifestyle of European countries and might well not apply in countries which had formerly been colonized. He hoped that the representative of Portugal would explain whether such principles related solely to the maintenance of the democratic tradition or whether they went further and possibly reflected an attempt at wider standardization on the basis of the model set by the European Common Market. In that connection, the gap between Europe and some third-world countries was widening, particularly in the economic field.

23. He wondered whether the small racist groups in Portugal to which reference had been made represented merely isolated "pockets" of racism or whether they were symptomatic of the emergence of a more widespread phenomenon in Portuguese society.

24. Referring to paragraphs 59 and 60 of the report, he felt that the use of the term "irreversible" to describe the process of change in the Republic of South Africa was rather over-optimistic, since any historical process of that kind was inevitably slow and in many cases erratic.

25. Mr. SONG Shuhua, referring to paragraph 111, commended the provision that any person with an inadequate knowledge of Portuguese should be assisted by an interpreter in legal proceedings, but asked whether such cases occurred frequently; if so, that might suggest that there were frequent conflicts between Portuguese nationals and members of other nationalities.

26. He noted from paragraph 214 that very few gypsy children attended school or university. That being the case, they might have difficulty in finding employment and although there was no de jure discrimination against them, that situation might be tantamount to de facto discrimination. As was the case in some other countries, assistance should be provided to parents to enable them to settle in areas within easy reach of schools.

27. Mr. MACIEL (Portugal), responding to questions raised by Committee members, said that while Portugal recognized the importance of demographic composition, it had followed the United Nations recommendations concerning census-taking which suggested that the inclusion of questions relating to race should be optional. Those recommendations, combined with the constitutional principle of non-discrimination, which could be invoked directly before the courts, had prompted his Government not to include a breakdown by race in its report. The data provided in the report related to the country of origin of aliens residing in Portugal. To that information he could add that there were 4 million Portuguese migrant workers abroad; Portugal had a population of 10.5 million, most of whom were female; the birth rate in 1988 had been 11.9 per cent and the mortality rate 9.5 per cent; the average life expectancy in 1988 had been 74 years - 70 in the case of men and 77 in the case of women. The average annual inflation rate was 13.4 per cent, but had fallen to 12.9 per cent since January 1990. The estimated GNP growth rate had been 4 per cent in 1990, as against 5.4 per cent in 1989; the per capita GDP in 1988 had been $US 4,265, and the unemployment rate in 1990 4.8 per cent.

28. In reply to the question about the issuing of residence permits to aliens, the applicable criteria were respect for Portuguese laws, especially those concerning aliens, adequate means of subsistence, viable reasons for residence and family ties with other residents, whether national or foreign. There were three types of permit: those valid for one year, which were renewable; those valid for five years, renewable, issued to aliens who had been living in Portugal for five years; and those issued to foreigners who had been resident in Portugal for 20 years. That explained the disparity between the reported number of aliens living in the country and the number of residence permits issued in 1988 (paras. 10 and 11 of the report). Regarding passports issued to aliens, Portuguese law provided for the issue of passports valid for two years to stateless persons, nationals of countries without any diplomatic or consular representation and of countries with which Portugal had concluded agreements to that effect, and persons not resident in Portugal whose exceptional circumstances were deemed to warrant such action. The purpose of those arrangements was to guarantee that aliens were in possession of a travel document to enable them to exercise their right to leave and re-enter the country.

29. With regard to paragraph 12 and the granting of asylum, the right of asylum could be accorded to stateless persons and aliens prosecuted, or seriously threatened with prosecution, in their normal place of residence, for activities in defence of democracy, liberation, peace, freedom and human rights. The procedures in force were of an urgent nature and were conducted free of charge. Applicants were notified of the decision taken and could appeal to the Supreme Administrative Tribunal in the event of a negative decision. If the application was turned down, applicants could remain in the country for a transitional period of not more than 60 days. The foregoing

measures guaranteed the effective protection of applicants for asylum and a response to acts of racial discrimination. Paragraph 17 listed precise, objective criteria for the acquisition or retention of passports by nationals of Portugal's former African colonies.

30. He drew attention to paragraphs 98-100 relating to the establishment of the Legal Information Office, adding that the lawyers providing legal advice were prohibited from receiving, directly or indirectly, any sum from the person or persons concerned or those in any way connected with the case and from taking up the case outside the scope of the consultation; three legal advice offices were now in operation, and the opening of 15 others throughout the country had been announced by the Minister of Justice.

31. One speaker had asked whether the functions of the Commission for the Promotion of Human Rights and the Elimination of Inequality in Education, referred to in paragraph 49, were confined to education. It was an interministerial commission comprising representatives of the Ministries of Education and Justice, and its function was to promote awareness of human rights. Several meetings had been held and brochures published. It participated actively in the preparation of school curricula and training programmes for prison personnel, police officers and judges.

32. The Commission on the Status of Women, established in 1977, provided legal information, free of charge, on family law, labour law and social security, and took part in the drafting of legislation concerning the status of women, notably under the Civil and Criminal Codes and the Code of Advertising. Competent non-governmental organizations were associated with the work of its Advisory Council.

33. No specific commission or authority had been set up to deal with racial discrimination issues. Apart from the courts, a significant role was played by the Ombudsman who, under article 23 of the Constitution, was an independent entity to whom citizens might apply in connection with actions or omissions by the authorities, including any instances of discrimination. His function was to defend the legitimate rights and interests of citizens, and make recommendations for the improvement of administrative services and the rectification of shortcomings.

34. With reference to paragraphs 50-54 of the report, he would ensure that the Committee was provided with the text of the Constitutional Court's decision that article 81, paragraph 2, of the General Service Regulations of the National Republican Guard was unconstitutional, in respect of searches carried out in the homes of gypsies. The Constitutional Court's decision was binding, requiring the re-entry into force of rules or principles which might have been repealed, in order to bring them into line with current legislation.

35. Paragraphs 67-70 of the report described the constitutional and legislative provisions concerning incitement to racial discrimination, acts of violence, and participation in racist and Fascist organizations. He referred the Committee to paragraphs 75-82 of the report in connection with the emergence of the "skinhead" movement in Portugal since 1985. A major danger arising from the presence of skinheads, with their ideology of violence and racism, was that they were manipulated by far right-wing organizations,

notably the National Action Movement (MAN). The Government considered that, within the legal framework of article 189 of the Criminal Code, providing for a two to eight-year prison sentence, and article 132, providing that the crime of murder was deemed aggravated if motivated by racial or religious hatred, the "skinhead" movement could be contained.

36. A question had also been asked about the Press Council's recommendation in connection with a series of newspaper articles, referred to in paragraph 73 of the report. The recommendation had been made in conformity with the journalists' code of ethics requiring them to refrain from encouraging racial hatred. The Prosecutor-General had accordingly carried out an investigation of those acts, which were punishable under article 189 of the Criminal Code, whereby those found guilty were liable to a prison sentence of one to five years. The Lisbon Criminal Court was now investigating the case.

37. A question had been asked about the extent to which those charged with an offence availed themselves of the legal remedies at their disposal. All courts had been requested by circular letter to submit information to the Office of the Prosecutor-General on any cases of violation of fundamental rights brought before them. No replies had been received concerning cases of racial discrimination. A further consultation among higher courts and courts of appeal had yielded information on only one decision of relevance to the Committee. It had concerned the exclusion of a non-Portuguese candidate from admission to a primary and secondary school teaching examination. The exclusion had been based on the constitutional provision that persons who did not possess Portuguese nationality were barred from holding public office, with the exception of an office of an "eminently technical" nature. The court had annulled the decision on the grounds that that requirement did not apply to the teaching profession at that level.

38. Mr. Ferrero Costa had asked about the implications of the phrase "European identity" used in article 7 (5) of the Constitution, in relation to the objectives of the education system, and had wondered whether Portugal's concern to strengthen its "European identity" might adversely affect persons of non-European origin. Portugal was, of course, a European country, and it was therefore natural that it should desire to help build a united Europe by strengthening Europe's cultural, political and economic identity. However, that did not mean that it adopted a discriminatory attitude towards non-Europeans: on the contrary, it laid great stress on co-operation with other countries and peoples. In the field of international relations, it had special ties of friendship and co-operation with other Portuguese-speaking countries. In education, its aim was to help students develop a national consciousness which would include awareness of the need for international co-operation and support for universal human values. It should be noted that the Constitution laid down that the aim of teaching must be to promote mutual understanding and tolerance between peoples.

39. One member had asked whether the education system was being used to correct imbalances in local and regional development. Those imbalances were the result of population movements away from rural areas during the 1960s and 1970s, and concentration of industrial development along the coast. Priority had been given to modernizing the education system, and in particular to expanding higher education. New universities had been established in the

regions, as well as polytechnics, which provided training in scientific and practical subjects. It was hoped that the policy of diversification in higher education would help to remedy many of the socio-economic deficiencies from which the regions suffered.

40. In the field of secondary education, special importance was attached to vocational training as a means of meeting the development needs of the regions and making use of local manpower resources. A regional network of secondary education colleges had been set up and it was hoped that they would rectify imbalances by providing educational opportunities for all.

41. The country's illiteracy rate for 1990 had been estimated at 13.3 per cent, but it should be realized that the highest rates were found among the rural population and in older age groups. In the 35-39 age group the rate was below 2 per cent: for the over 55s, it was 23.5 per cent and for the over 65s it was as high as 42.3 per cent. Among young people, however, illiteracy was virtually non-existent. Efforts to combat illiteracy made no distinction between different ethnic or national groups: improvements were simply the result of advances in education in recent years. One question had concerned Portugal's mother tongue: Portugal had a single official language, namely, Portuguese.

42. Another member had asked whether any practical measures had been taken to preserve the identity of cultural minorities. Mirandês was a dialect that was still spoken by some 15,000 people (chiefly peasants) in the north-east region of Portugal, and was handed down orally through theatre, popular music and novels. The Ministry of Education had taken steps to preserve the dialect by organizing optional language classes in primary schools, and those classes were soon to be extended to secondary schools. A Mirandês dictionary was currently in course of preparation. It was hoped that the language courses would help to make Mirandês recognized as a valuable cultural heritage and would encourage its preservation.

43. Where education for gypsies was concerned, one of the measures taken had been the introduction of training courses for teachers of gypsy children. Emphasis had also been laid by the Ministry of Education and social welfare institutions on making gypsy families themselves aware of the importance of schooling for their children: the Romany organizations in Portugal had endorsed the Government's efforts in that direction.

44. One member had asked what steps were taken to protect the rights of minorities in teaching establishments. There were in fact special programmes to help pupils with learning difficulties, notably through the use of teachers with the same mother tongue. Under a special co-operation scheme between Portugal and Portuguese-speaking African countries, access to higher education was provided for students from such countries through a quota system.

45. A number of steps had been taken to disseminate information on the Convention. The text of the Convention had been translated and published in the Official Gazette in 1982, and it had also been published in the Ministry of Justice Bulletin. The reports submitted by Portugal to the Committee, as well as the summary records of the Committee's meetings, were also made public in Portugal. As part of a programme entitled "Justice and the Citizen", a

compilation of human rights instruments applicable in Portugal was shortly to be published. In 1988, Portugal and the Centre for Human Rights had organized a training seminar for Portuguese-speaking countries, chaired by Mr. Lamptey, which had had the Convention as its theme. In April 1991, another training course was to be held in Lisbon in conjunction with the Centre. Lastly, the subject of human rights, including the Convention, was included on the curriculum of the training courses organized by the Ministry of Justice and the Public Prosecutor for magistrates of the Republic of Angola.

46. Mr. GOMEZ (Portugal) said a question had been raised concerning the status of overseas territories under Portuguese administration. Following the revolution of 1974, which had re-established a democratic regime in Portugal, one of the new Government's priority tasks had been to put an end to the colonial war in Africa, which had been raging since the 1960s. Immediate steps had been taken to set in motion the process of decolonization so that Angola, Mozambique, Cape Verde, Guinea Bissau and Sao Tome and Principe could attain the independence to which they had so long aspired. By the following year, 1975, Portugal had put an end to its former colonial empire.

47. However, there were still two territories which did not form part of Portugal but which, under international law, remained subject to Portuguese administration, namely, Macao and East Timor. Where Macao was concerned, Portuguese administration was due to end in December 1999; the modalities for transfer of sovereignty had already been agreed between Portugal and the People's Republic of China in 1987. Under that agreement, Macao was to become a special administrative region of China, but its social, economic and legal systems would remain unchanged. After the transfer of sovereignty, the inhabitants of the territory would retain all the basic rights they had previously enjoyed, including freedom of expression, of the press, of assembly and association, of religion and belief, and so on. All would be considered equal before the law, and no discrimination would be practised on grounds of nationality, sex, race, language, religion or economic or social status. That was evidence of Portugal's concern to ensure that the fundamental human rights of the inhabitants of Macao were guaranteed even after 1999.

48. The other territory which, in accordance with resolutions of the General Assembly and the Security Council, was still subject to Portuguese administration, was East Timor. Since December 1975, however, Portugal had been prevented from administering the territory because of its illegal occupation by the Indonesian army, against the wishes of the population. At the time of that occupation, Portugal had already been engaged on the process of decolonization. The Government had not forgotten its obligations towards the people of East Timor and was still doing its utmost to ensure that their right to self-determination became a reality.

49. In relation to article 3 of the Convention, one member had raised the question of Portugal's relations with South Africa and of its policy towards apartheid. Portugal had always considered that maintenance of relations with South Africa was compatible with a policy of firm condemnation of apartheid. Its position was that such a system was immoral and unjust and should be dismantled once and for all; that position governed its policies where international relations were concerned.

50. As to economic ties, it should be borne in mind that there was a community of over 600,000 Portuguese in South Africa. Trade links with that country were nevertheless negligible: only 0.29 per cent of Portugal's exports went to South Africa, and 0.77 per cent of its imports were from that country. Mr. Khalifa's report to the Sub-Commission on Prevention of Discrimination and Protection of Minorities, of August 1990, had stated that only eight Portuguese companies had trade relations with South Africa, and only four South African companies had trade relations with Portugal.

51. However, it was important to note that in the period that had elapsed since the previous report there had been profound changes in the political situation in South Africa. The freeing of Nelson Mandela had initiated a process of dialogue between the Government and representatives of the majority of the population, and the repeal of the Group Areas Act and the Lands Act, as well as the suspension of the Population Registration Act, marked significant advances. While Portugal realized that many obstacles still remained to be overcome if apartheid was to be eliminated, it was nevertheless optimistic for the future.

52. Mrs. Sadiq Ali had referred to the bilateral agreement of 1974 on former Portuguese territories in India. The law on Portuguese nationality in force at the time of Portugal's colonization in India was in fact based not only on jus sanguinis, but also on jus soli. Accordingly, the territory of Goa was considered as Portuguese territory, and hence persons born in Goa were in principle of Portuguese origin. The great majority of Goans in Portugal were in fact Portuguese, and hence enjoyed the same rights and obligations as other Portuguese citizens. The Portuguese law on nationality recognized the principle of dual nationality.

53. In view of the increasing interest shown by the Committee in the question of gypsies, Portugal would be providing fuller information in its next report. Efforts were being made to provide them with equal opportunities for education, which would enable them to participate more fully in the democratic life of the country. The principle of universality applied in education generally, and not simply where gypsies were concerned. Portugal believed that the identity of the gypsies would be respected within the context of that principle of universality.

54. Mr. Vidas had asked about the status of persons who were applying for, but had not yet received, Portuguese nationality. The status of such persons was normally decided through the issue of a residence permit.

55. On the question of the effects of a decision of unconstitutionality, he pointed out that as a result of the decision referred to in paragraph 52 of the report, the regulation in question had been repealed.

56. Another member had asked what steps were being taken to motivate gypsy families to ensure that their children attended school. The co-operative programmes launched by the Ministry of Education and social welfare organizations had achieved great success in increasing awareness of the need for education among such groups.

57. Mrs. SANTOS PAIS (Portugal), replying to Mr. Wolfrum, who had asked why the report stated that non-resident aliens could only be given legal protection where there were bilateral agreements granting reciprocal status, said the intent of the report had been to cover the case of all aliens, even those who were not subject to Portuguese jurisdiction. He had also asked whether an individual could lodge a complaint directly before the Constitutional Court. Individuals had access to that Court only when a question of constitutionality was involved. In the case referred to in the report, it was the Office of the Public Prosecutor which had ordered the inquiry.

58. Another question had related to the Office of the Ombudsman. That was an independent public body appointed by Parliament, which had a parallel role to the courts in defending the rights of individuals.

59. Mr. Reshetov had asked what foreign languages were taught in Portuguese schools. English and French were taught as compulsory languages, while Spanish and German were optional. He had also asked about the application of provisions of international instruments ratified by Portugal. There seemed to be some difficulty of translation in the Russian version of the report: in fact, article 18 of the Constitution provided that rights and guarantees arising from ratification of international conventions were directly applicable in Portuguese law and were binding on all public bodies.

60. Mr. de Gouttes had asked whether the law requiring that deputies found to be members of Fascist organizations should be removed from office had ever been applied, and whether that law applied also to membership of racist organizations. There had not as yet been any such case, but it should be realized that Portuguese legislation defined "fascism" very broadly, and that it was taken to include not only incitement to violence as a means of political struggle, but also incitement to racism.

61. Mrs. Sadiq Ali had asked about the role of television. In fact, one of the objectives of the Government was to use television to develop programmes for the protection of cultural minorities. Legislation governing television expressly provided for the right of reply on political matters. Concerning the rights of opposition parties to promote their views on radio and television, the broadcasting system was now in the process of privatization, but fuller information would be provided in the next report.

62. As to the question on the role of the Ombudsman, she only had data for 1986, but in that year the Ombudsman had recommended 10 legislative measures, five of which had been adopted, and 23 administrative measures, of which seven had been adopted. It would thus be seen that the role of the Ombudsman in Portuguese life was a significant one.

63. Lastly, on the question of "European identity", she wished to make it clear that Portugal understood by that term the common values which united the countries of Europe, among them the principles of pluralism, democracy and universal suffrage.

64. The CHAIRMAN expressed the Committee's appreciation for Portugal's report and for the very full information provided by its representatives.

65. Mr. RESHETOV observed that 8 March was International Women's Day. He wished to congratulate Mrs. Santos Pais on her excellent performance on behalf of her country, and Mrs. Sadiq Ali and the women members of the Secretariat on the work they were doing for the Committee. The participation of more women in the Committee's proceedings would be welcome.

Mr. Maciel, Mr. Gomez and Mrs. Santos Pais (Portugal) withdrew.

66. The CHAIRMAN invited Mr. Ferrero Costa, country rapporteur, to assess Portugal's third and fourth periodic reports.

67. Mr. FERRERO COSTA, country rapporteur, said that there appeared to be a consensus that the Government of Portugal was to be congratulated on its reports, which followed the Committee's guidelines and contained a great deal of clearly presented information. In recent years, Portugal had obviously made substantial progress in adopting measures to combat racial discrimination. Its decision to make the declaration under article 14 of the Convention was particularly welcome. The Committee hoped, however, that certain information that it had requested, especially information on the demographic composition of Portugal's population, on progress made in criminal procedures and on the outbreak of "skinhead" forms of racism, would be provided in the next periodic report.

68. Mr. RESHETOV said that the oral interventions of the Portuguese delegation had come close to the highest possible standards as far as clarity, accuracy and the answering of questions were concerned. They could serve as a model for other delegations.

69. Mr. SONG Shuhua considered that the text submitted by the Portuguese Government was frank and better than the reports submitted by most other States parties.

70. Mr. de GOUTTES endorsed Mr. Reshetov's assessment of the quality of the Portuguese delegation's replies. There was, however, a problem with regard to statistical data on the demographic composition of the population. The head of the Portuguese delegation had indicated that, in view of the United Nations 1980 guidelines on census-taking, his Government had misgivings about making classifications based on race. The Committee should therefore consider the implications of those guidelines.

71. Mr. YUTZIS noted that there was a great difference between the Portugal of the Salazar dictatorship and the Portugal whose comprehensive reports were being considered by the Committee today. The reports clearly reflected a great deal of progress in promoting human rights in general and in combating racial discrimination in particular, and had been amply supported by the oral information supplied by Portugal's representatives at the meeting.

72. Mr. de Gouttes had drawn attention to an important problem. The definition of race was often ambiguous, and Portugal was not the only country to have shown reluctance in producing statistics on the racial composition of its population.

73. Mr. WOLFRUM said that he was intrigued by the references to racial statistics made by Mr. de Gouttes and Mr. Yutzis. The Committee's revised guidelines concerning the form and contents of reports specifically requested States parties to endeavour to include in their reports relevant information on the demographic composition of the population. If the Committee failed to receive that information, it could hardly ascertain whether the Convention was being implemented. There might be some ambiguity, but membership of an ethnic group depended largely on self-identification. The argument that a State party could not provide, or did not wish to provide, information on the demographic composition of its population might in itself be a form of racial discrimination, since it was tantamount to denying the existence of ethnic groups.

74. Mr. YUTZIS emphasized the importance of the point raised by Mr. de Gouttes. Three aspects had to be considered. First, there was the problem of interpreting what was meant by article 1 of the Convention; second, there was the question of what approach the Committee should adopt; and third, there was the problem of how the matter was perceived by States parties. Incorrect interpretations could be made, sometimes intentionally. Nevertheless, if it was to function properly, the Committee should request information on the demographic composition of the population in all cases, but it would have to clarify exactly what was meant by the concept of race.

75. Mr. RESHETOV said that he did not agree with Mr. Yutzis. Article 1 of the Convention was perfectly clear and the matter required no further discussion.

Mr. Ferrero Costa took the Chair.

76. Mr. LAMPTEY agreed that article 1 of the Convention was quite clear. If sociological considerations were to be taken into account, reference might be made to the UNESCO Declaration on Race and Racial Prejudice.

77. The CHAIRMAN, summing up, said that the Committee apparently agreed with the assessment which he had previously made in his capacity as country rapporteur, although it had stressed even further the quality of Portugal's third and fourth periodic reports. Nevertheless, the Government of Portugal should be requested to provide information on the demographic composition of its population, although it was recognized that certain difficulties might be involved. The Committee had thus concluded consideration of Portugal's third and fourth periodic reports.

Eighth to eleventh periodic reports of Uruguay (CERD/C/197/Add.3)

78. Mr. LACARTE-MURO (Uruguay) said that he wished to supply the Committee with further information to supplement that already given in his country's reports. A number of annexes had been submitted to the Secretariat for distribution to any members who wished to consult them. They included an exhaustive account of the country's demographic composition, broken down by geographical area, sex, age, civil status, education, migration, employment, fecundity and type of home, based on a census taken in 1985. A copy of the statistical yearbook of the Directorate-General for Statistics and Census for 1989 was also included in an annex. In the compilation of statistics on

Uruguay's demographic structure, classification by "races" or "minorities" had traditionally been omitted, in so far as such classifications could in themselves constitute a form of discrimination. Information on migration had been supplied.

79. Article 8 of the Uruguayan Constitution had already been considered by the Committee, especially in connection with Uruguay's previous report. Its wording had merited no special comment by the Committee, but it was a basic provision of the Constitution which established the equality of all inhabitants of the Republic and equality of opportunity. The term "equality before the law", which had been referred to critically in the observations made by the Committee, fully coincided with that used in article 5 of the Convention.

80. In connection with article 4 of the Convention, article 149 bis and ter of the Penal Code covered those aspects which had not been taken into account in previous legislation and supplemented the rule mentioned in other reports. Article 6 (j) of Act No. 10,279 of 19 November 1942 established the offence of subversive association for persons who promoted, constituted, organized or directed associations, entities, institutions or sections aimed at inciting racial conflict or hatred and imposed penalties on them. Article 149 bis of the Penal Code remedied the defects in Act. No. 10,279. In connection with article 2, paragraph 2, of the Convention, it should be pointed out that foreign communities residing in Uruguay enjoyed the same protection as nationals and had equal access to free public education. All religions were respected, and foreign communities retained their national traditions without any restriction.

81. As far as article 3 of the Convention was concerned, Uruguay had complied with the recommendations made by international organizations and had substantially restricted its relations with South Africa. Uruguay's representatives in international forums had systematically condemned the odious system of apartheid. Uruguay was encouraging the process of change in South Africa for the purpose of achieving the total eradication of apartheid and the establishment of a State based on democratic and non-discriminatory principles. It would regulate its international conduct on the basis of that essential objective.

82. All the requirements of articles 5 and 6 of the Convention were met in Uruguay. There was a great deal of information on the subject, which could be made available to the Committee if it so required.

83. The referendum to which Act. No. 15,848 had been subjected was not really a matter for the Committee on the Elimination of Racial Discrimination. The purpose of the Act, the results of its implementation and the grounds for its validity had already been explained in the Human Rights Committee, the Inter-American Commission on Human Rights and the United Nations Commission on Human Rights.

84. His Government appreciated the constructive exchange of views which its representatives had had with members of the Committee; that process would lead to the formulation of ideas for incorporating international rules in the practice and municipal law of Uruguay.

85. All the remedies of domestic law were available to all inhabitants of the Republic. Individuals could also submit their cases to the Committee on the Elimination of Racial Discrimination. Uruguay had always been proud of the fact that it had been the first State to recognize the jurisdiction of a supranational body - namely CERD - for the consideration of complaints by individuals. The fact that in practice no such complaints had been made to the Committee indicated that no violation of the Convention had been sufficiently important for proceedings before the Committee to be instituted. However, no country was completely free of violations of human rights, as the anti-Semitic acts committed on 25 September 1989 had shown. However, the general condemnation to which those acts had given rise among all sectors of Uruguayan society was a clear indication of the degree of sensitivity displayed by Uruguayans in that respect. Further information on the extent of the condemnation could be supplied upon request.

86. Uruguay prided itself on being a country in which human rights were fully in force. The democratic system of government ensured respect for civil and political rights and the progressive implementation of economic, social and cultural rights. His country firmly intended to co-operate with the relevant international bodies and to engage in a fluid dialogue for the purpose of achieving common objectives.

The meeting rose at 12.55 p.m.

CERD/C/SR.897
4 April 1991

ENGLISH
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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Thirty-ninth session

SUMMARY RECORD OF THE 897th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 8 March 1991, at 3 p.m.

Chairman: Mr. SHAHI

CONTENTS

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

Eighth to Eleventh periodic reports of Uruguay (concluded)

Eighth and Ninth periodic reports of Malta

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Eighth to Eleventh periodic reports of Uruguay (CERD/C/197/Add.3) (concluded)

At the invitation of the Chairman, Mr. Lacarte-Muro (Uruguay) took a place at the Committee table.

1. Mr. WOLFRUM, speaking as rapporteur entrusted with the preliminary examination of the eleventh periodic report of Uruguay (CERD/C/197/Add.3), said that the document also contained the eighth, ninth and tenth periodic reports of the State concerned, and thus covered a period of some eight years. The text of the report was somewhat short (four pages) considering the period covered. The additional information provided by the Uruguayan delegation in its oral report was thus to be welcomed.

2. Neither the written report nor the oral presentation gave any information concerning the demographic composition of Uruguay, although it was stated in paragraph 4 of the report that the country had undergone "successive waves of immigration". The same paragraph indicated that the population of Uruguay was comprised of an ethnically, culturally, educationally, religiously and linguistically homogeneous group of human beings. In its initial report to the Human Rights Committee (CCPR/C/1/Add.57), the Government of Uruguay had stated that the country had a considerable number of coloured people whose status was equal, both in law and in practice, to that of the other inhabitants of the Republic, and that there were no indigenous persons. As far as the question of minorities was concerned, that report had denied the existence of problems of any kind in the course of Uruguay's contemporary history. In the document distributed by the Uruguayan delegation at the previous meeting, which he would have preferred to receive somewhat earlier, and perhaps in English and French, it was stated that where the demographic composition of Uruguay was concerned, breakdowns by "race" or "minority" were no longer made on the grounds that the drawing of such distinctions might constitute a form of discrimination. That was not the view of the Committee. In addition, according to the report submitted by Uruguay to the Committee in 1971, the population of Uruguay (3 million inhabitants) was comprised essentially of persons of European origin. There did exist communities of Jewish or Arab origin which together made up 4 per cent of the total population, as well as inhabitants of African stock, who represented less than 1 per cent of the total. That picture of the demographic composition of Uruguay did not tally with the description given in the eleventh report. It was thus very much to be hoped that the Uruguayan Government would supply fuller information on that point in its next report, for the Committee was unable to monitor implementation of the Convention unless it was supplied with exact details concerning the ethnic composition of a country's population.

3. It was stated in the eleventh report (para. 2) that Uruguay had "a long tradition of liberal political thinking" which precluded the possibility of racial discrimination. While not wishing to challenge the validity of that

claim, he would point out that no social, economic or political system could of itself provide a guarantee against the existence, or emergence, of racial discrimination or racial tensions. It was therefore essential for the judicial system to take appropriate steps to prevent such phenomena from occurring.

4. With reference to article 8 of the Constitution of Uruguay, which stipulated that "All persons are equal before the law, no other distinctions being recognized among them save those of talent and virtue" (CERD/C/197/Add.3, para. 6), he was not convinced that that provision was fully equivalent to a prohibition of racial discrimination in the sense of article 2 of the Convention. It was to be hoped that the Parliament of Uruguay would pass a law on the subject which the courts would be required to apply.

5. He also doubted whether article 8 of the Constitution could effectively be invoked before the courts, simply because of the way it was worded. According to the 1942 Constitution, "the provisions of the Constitution which grant rights to individuals, as well as those which confer powers and impose duties on public authorities, shall not fail to be applied by reason of the lack of corresponding regulations ...". Although that provision appeared to offer a certain guarantee as far as procedure was concerned, article 8 of the Constitution did not seem sufficiently clear to be invoked effectively; consequently, it would be helpful if Uruguay could provide more details on the matter, as well as on the judicial system, in its next report.

6. The Government of Uruguay had informed the Committee that in 1989 the following new provision, article 149 bis, had been incorporated into the Penal Code: "Anyone who ... incites to hatred, derogatory behaviour or any other form of moral or physical violence against one or more persons on the grounds of the colour of their skin, their race, religion or national ethnic origin shall be liable to 6 to 18 months in prison" (CERD/C/197/Add.3, para. 12). That provision was presumably designed to implement article 2, paragraph 1 (b) and article 4, paragraph (a) of the Convention, and he asked to what extent it had been invoked before the courts. In that connection, he would like to know whether a prosecution had been brought in the case of the profaning of the Jewish cemetery at La Paz under that provision, although the provision itself was in line with the requirements of the Convention. He would like Uruguay, in its next report, to provide information on the banning of organizations based on racist ideas, in accordance with the provisions of article 4, paragraphs (a) and (b) of the Convention.

7. He noted that the report gave no information with regard to implementation of article 2, paragraph 2 of the Convention. Although that was not unexpected in view of the fact that Uruguayan society was homogeneous, he would like to know whether there was currently any immigration into the country and, if so, how it was being dealt with.

8. While the inadequate information given in the written report regarding implementation of article 3 of the Convention had been sufficiently amplified in the oral presentation, it would be helpful if further data could be included in the next report.

9. The information given in paragraph 18 in respect of implementation of articles 5 and 6 of the Convention was likewise inadequate. Since the delegation of Uruguay had stated its intention of reviewing the relevant provisions of the Constitution, he urged it to ensure that additional information on that point was included in the next report. In that connection, he wished to emphasize that the information given on the Constitution and on other legislation was incomplete. Of course, it was not for the Committee to monitor implementation of the civil and social rights listed under article 5 of the Convention, but rather to ensure that they were exercised on a basis of equality. That was why it sought to establish how such rights were guaranteed, so that it could decide how they were being exercised under the terms of the Convention. In that connection, he was concerned to note that the Uruguay report made no mention of the referendum that had been referred to orally, and asked whether the subject would be dealt with in the next report.

10. In conclusion, he welcomed the resumption of the dialogue between the Committee and Uruguay after nearly eight years of silence; the amendments to the Penal Code, which were evidence of a positive initiative where the Convention was concerned; and lastly, the restoration in Uruguay of a democratic regime based on the rule of law, which he saw as a further guarantee against racial discrimination.

11. Mr. SONG Shuhua noted that, while there were a number of shortcomings in the written report of Uruguay, notably in regard to data on the demographic composition of the country, the oral introduction by the representative of Uruguay had contained a wealth of useful information. However, he regretted that the written report had not been drawn up in accordance with the Committee's guidelines.

12. From paragraph 18 of the report, which concerned implementation of articles 5 and 6 of the Convention, it would appear that the Constitution of Uruguay did not give any precise indication of what measures should be taken to give effect to the principles enshrined in it: consequently, legislation needed to be enacted.

13. The claim made in paragraph 19 that Uruguay had one of the lowest illiteracy rates in the world needed to be supported by statistics.

14. He hoped that Uruguay's next report would contain additional information which would remedy the shortcomings of the document submitted to the Committee.

15. Mr. VIDAS also welcomed the resumption of dialogue with the Government of Uruguay after such a long period of silence.

16. The oral presentation of the representative of Uruguay had classified some of the points in the written report and had thus provided a more useful

basis for discussion. However, like the previous speaker, he regretted that the report had not been compiled in accordance with the Committee's guidelines, and asked the representative to bring that point to the notice of his Government. He would also like to have more detailed information on the demographic composition of the country.

17. On the matter of Act No. 16,048 of 16 June 1989 (para. 12 of the report) he asked what steps the Government had taken to inform the public about the Act's content.

18. Mrs. SADIQ ALI congratulated the representative of Uruguay on the additional information he had provided in his oral introduction.

19. She understood that there was currently a public debate in Uruguay over the need to reform the legal and judicial systems. What was in fact the position?

20. She would like to refer to the 1986 Law on Expiration, which had the effect of exempting from prosecution military and police personnel accused of human rights violations under the military regime. Local human rights groups and Amnesty International feared that that law might delay the investigation of disappearances, and guarantee impunity for the guilty. It would appear that the Supreme Court had upheld the law in several cases in which its constitutionality had been challenged. Had the judiciary regained its autonomy following the fall of the military regime, and had teachers who had lost their jobs for political or ideological reasons been reinstated? Of the estimated 300,000 Uruguayans who had left the country during the military regime, how many had returned? According to the representative of Uruguay, there were very few racial or linguistic minorities in the country. It would be useful to know what were the nationalities concerned, and to have the relevant figures. It would seem that non-whites were over-represented at the lower end of the economic scale. That situation might be due not to legislative measures or to official discrimination, but to lack of education and training. What was the true position, and how large was the population concerned?

21. Mr. de GOUTTES said the oral presentation given by the representative of Uruguay was more satisfactory than the written report, which in fact combined four periodic reports.

22. Taking up one of the points raised by the previous speaker, he asked what the Government of Uruguay was doing to support the efforts of non-governmental organizations to ensure the pursuit of investigations into disappearances and executions under the military regime, notably into cases of disappeared or unidentified children.

23. Mr. LECHUGA HEVIA, referring to paragraph 16, subparagraphs (a) to (c) of the report, concerning measures taken by the Government of Uruguay in regard to the apartheid regime, pointed out that subparagraph (d) of the same paragraph stated that the country had followed a consistent policy of establishing diplomatic relations with African States. Did Uruguay still have diplomatic and trade relations with South Africa?

24. Mr. YUTZIS also welcomed the resumption of dialogue between Uruguay and the Committee, particularly in view of the fact that Uruguay was one of the countries to have made the declaration provided for under article 14 of the Convention, which was of great importance for the Committee's work.

25. There was one question that was worth discussing in general terms, since it arose not only in the case of Uruguay, but also in that of other States parties. In his oral introduction to the report, the representative of Uruguay had stated that his country had decided there was no need to compile demographic statistics on the basis of race, ethnic origin, etc. However, if it was to monitor implementation of the Convention, the Committee needed to know what was happening in practice at different levels of society, and that would only be possible on the basis of factual information. In paragraph 4 of the report, it was claimed that in Uruguay no cases of racial discrimination had ever been reported. He pointed out that it was always possible that cases of racial discrimination had occurred without having been reported. Indeed, it was only when a certain limit had been reached that cases came to be reported, reporting being a translation into legal terms of certain social facts. Such facts could only be learned empirically, through statistical studies, surveys, etc. Thus, migration from the countryside to the capital was a phenomenon which existed virtually throughout Latin America. Was it possible to single out a particular skin colour as predominant in the population groups which had now resettled around Montevideo? Did those population groups display different cultural characteristics? He understood that there were far more blacks in Uruguay than in Argentina. To what cultural stratum did they belong? How far did they benefit from the educational system? To what extent were they represented in Government service, in the armed forces, and in the police? How were they integrated into society? Had any research been carried out on the question?

26. In his view - a view which was shared by other members of the Committee - racial discrimination was an anthropological variable, constantly present in every society, which exhibited itself in flagrant form when certain conditions were fulfilled. It was thus important to proceed with the collection of demographic data and with social and cultural research, since it was only by that means that situations contravening the Convention could be brought to light.

27. Mr. LACARTE-MURO (Uruguay) said he, too, welcomed the resumption of dialogue between the Committee and Uruguay, after a break of eight years. He hoped that collaboration between the Committee and his country would be close, indeed exemplary.

28. Replying to questions raised, he noted that many members of the Committee had expressed regret at the absence of any classification of the population according to ethnic groups, minorities etc. It was true that mention had been made earlier of Jewish and Arab communities, as well as of a community of African origin. Similarly, it could be said that there existed French, Scottish, or Spanish communities, but that would not give a true picture of the situation. Uruguayans considered themselves to be Uruguayans, and not members of a particular community. However, the Committee's concerns would be conveyed to the relevant authorities. Migration to Montevideo was a spontaneous phenomenon, the cause of which was economic, namely that industry

was chiefly concentrated around the capital. For the time being, it was impossible to say whether there was a relation between skin colour and access to high-level posts, or whether population groups other than whites occupied the bottom of the social scale. Answers to those questions would be given in Uruguay's next report.

29. One comment by the special rapporteur had concerned the risk of discrimination on the part of either the legislature or the executive. The reply was simple: if a law was discriminatory, it contravened the Constitution and should be repealed. If a decree was discriminatory, it violated the Constitution, and the President, in signing it, was breaking his oath to respect the Constitution. The law of *amparo* (Act No. 16,011 of 1988) provided that anyone who considered that his rights and liberties guaranteed under the Constitution had been infringed had the right to take *amparo* proceedings. Prohibition of racial discrimination was thus guaranteed as far as legislation was concerned and, since Uruguay was a state subject to the rule of law, it was also guaranteed in so far as court practice was concerned. In that connection, documentation concerning the activities of the judiciary was currently being prepared, and would be forwarded to the Committee as soon as it was ready. Similarly, the information requested concerning the national legal system and concerning the practical application of the new article 149 *bis* of the Penal Code declaring incitement to hatred, contempt or violence towards certain persons to be an offence, would also be provided. Organizations which espoused ideas or theories based on the superiority of a particular race or group of persons had long been banned by law (see the seventh periodic report of Uruguay, document CERD/C/91/Add.9, p. 2).

30. Information had been requested concerning the regime applicable to persons immigrating to Uruguay: written documentation would be sent to the Committee on that question. Not surprisingly his country was also experiencing the phenomenon of emigration due to economic causes, as was unfortunately the case for many developing countries.

31. Another question had concerned relations between Uruguay and South Africa. Uruguay had diplomatic relations with South Africa at the level of a *chargé d'affaires ad interim*. Trade ties with that country were insignificant.

32. The question concerning assistance given to non-governmental organizations seeking to investigate disappearances and executions, notably of children, was perhaps beyond the Committee's competence, but it would nevertheless be communicated to the Government of Uruguay.

33. The literacy rate in Uruguay was one of the highest in Latin America (between 97 and 99 per cent of the adult population). Regarding the publicity given to Act No. 16,048, he said that in his country all laws were published, on the same day they were enacted, in the Official Gazette, to which all citizens had access. In addition, there were civil rights monitoring groups, usually consisting of lawyers and other experts, which followed such legislation very closely. There was thus no risk of the public not being aware of the Act. The question concerning the Law on Expiration would be transmitted to the Government of Uruguay. In that regard, some of the comments made were not perhaps strictly within the terms of reference of the

struggle against racial discrimination, as he had already noted in connection with another question. He would nevertheless ask his Government to respond to the concerns expressed by the Committee.

34. Several members had pointed out that the presentation of the eleventh periodic report of Uruguay did not comply with the Committee's guidelines. The Uruguayan authorities were the first to admit that, and he assured members that later reports would respond to the Committee's legitimate requests

35. The CHAIRMAN thanked the representative of Uruguay for the succinct but full replies he had given to the various questions raised. He hoped that Uruguay's next report would take into account the concerns expressed by the Committee.

Mr. Lacarte-Muro (Uruguay) withdrew.

36. Mr. WOLFRUM, rapporteur entrusted with examination of the report, presented the Committee's assessment of the report of Uruguay. He pointed out that very recently a significant transition had taken place in Uruguay, which would explain why many members had considered the written report to be not wholly satisfactory. However, many questions had been answered orally. He wished to emphasize the following points: first, a number of extremely positive facts had emerged both from the written report and from the oral presentation, notably the country's return to democracy and to the rule of law, both sure guarantees against any increase in racial tension or racial discrimination. Secondly, Uruguay had resumed its dialogue with the Committee after eight years of silence. Thirdly, the amendments to the Penal Code were in line with article 4, paragraphs (a) and (b) of the Convention, and thus represented very positive improvements. In conclusion, the Government of Uruguay should be encouraged to intensify the dialogue with the Committee that had been resumed at the current session.

37. The CHAIRMAN said that Mr. Wolfrum's comments would be reflected in the Committee's report. The Committee had thus concluded its consideration of the eleventh periodic report of Uruguay.

The meeting was suspended at 4.25 p.m. and resumed at 4.35 p.m.

Eighth and ninth periodic reports of Malta (CERD/C/171/Add.2)

At the invitation of the Chairman, Mr. Vella and Mr. Valentino (Malta) took places at the Committee table.

38. Mr. VELLA (Malta), introducing the eighth and ninth periodic reports of Malta, combined in a single document (CERD/C/171/Add.2), said that since the reports had been compiled, no case of racial discrimination had been brought before the courts or reported in the media. In addition, in September 1990 the Maltese Government had deposited with the Secretary-General of the United Nations the instruments of ratification of the International Covenant on Economic, Social and Cultural Rights and of the Convention on the Rights of the Child, as well as the instruments of accession to the International Covenant on Civil and Political Rights and the Optional Protocol thereto, and to the Convention against Torture and Other Cruel, Inhuman or Degrading

Treatment or Punishment. That day, the Maltese Government had deposited with the Secretary-General of the United Nations the instrument of accession to the Convention on the Elimination of All Forms of Discrimination against Women.

39. He wished to state that racial discrimination was totally alien to the Maltese people, that the Republic of Malta condemned such practices, notably apartheid, and that it made every effort to promote racial equality and racial tolerance in its educational system.

40. Mr. VIDAS, rapporteur entrusted with the preliminary examination of the report of Malta, thanked the Maltese Government for its co-operation with the Committee, and commended its ninth report. He welcomed the adoption by the Maltese Parliament of two measures: first, Act No. XIV, under which the substantive articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms had been incorporated into Maltese law, and under which any person who had been a victim of racial discrimination was now entitled to bring his case before the European Commission of Human Rights; and, secondly, Act No. XV, which had established a Commission for Investigation of Injustices. Could the representative of Malta give details of how those two acts were applied?

41. It was stated in paragraph 1 of the report (CERD/C/171/Add.2) that, since the submission of Malta's seventh periodic report, no cases of discrimination had either been brought before the courts or reported in the media. He would like to know whether all members of the public without exception were aware that they were entitled to go to court if they considered themselves to have been victims of racial discrimination, and pointed out that in the Committee's view no society was immune from such practices.

42. Concerning article 3 of the Convention, it should be noted that Malta remained a declared opponent of apartheid and had no diplomatic, consular, economic or other relations with South Africa.

43. The position of the Maltese Government with regard to article 4 of the Convention had not changed since the submission of the seventh report. Malta still took the view, which was not shared by members of the Committee, that that article was not mandatory.

44. In conclusion, he would like once again, as on the occasion when the Committee had considered the seventh report, to express the hope that the next report would contain data on the ethnic origins of the population.

45. Mr. WOLFRUM expressed satisfaction that Malta had made the declaration provided for in article 25 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, recognizing the competence of the European Commission of Human Rights to receive petitions from individuals. He wondered whether the Maltese Government intended to follow up that initiative by making the declaration provided for in article 14 of the Convention.

46. Mr. BANTON pointed out that article 4 of the Convention was mandatory, and that Malta was not applying its provisions.

47. Mrs. SADIQ ALI said that Maltese citizens had a de jure right to housing, work and education. However, for many years, political affiliations and family ties had played an important role in the area of employment, the public services, and the granting of import licences. Was there a body responsible for investigating allegations of injustice or discrimination and, if so, could the Committee be informed of the results of its work?

48. On 26 September 1988, the Constitutional Court had annulled a law passed by Parliament, on the grounds that it did not respect the right of a defendant to a counsel of his own choosing, including counsels who were also members of Parliament. A parliamentary committee had drafted a preliminary report on constitutional reform, which called in particular for measures to safeguard the independence of the judiciary. The Committee would like to be informed of the content of that report.

49. Mr. YUTZIS fully shared the view expressed by Mr. Banton, and emphasized the mandatory nature of article 4 of the Convention. Concerning paragraph 11 of the report, which stated that, while no racial problems existed in Malta, the Government would not hesitate, if the need arose, to enact legislation specifically proscribing all forms of racial discrimination, he pointed out that as a general rule, legislation was preventive in nature, and no country was immune from acts of racial discrimination.

50. Mr. de GOUTTES, referring to paragraphs 2 and 10 of the report, which stated that anyone who considered he had been discriminated against on grounds of race was entitled to take the matter to the First Hall, Civil Court or to the Constitutional Court, asked whether any perpetrator of an act of racial discrimination had ever been prosecuted under the Penal Code.

51. Mr. FERRERO COSTA fully shared the views expressed by Mr. Banton and Mr. Yutzis with regard to article 4 of the Convention. The claim that no racial discrimination existed in Malta was unlikely to carry conviction with the Committee.

52. Mr. VELLA (Malta) said that, where article 4 of the Convention was concerned, he had nothing to add to the explanations given by the Maltese Government in paragraph 16 of the report, and that his country was not the only one to have entered reservations in regard to that article. In any event, the Maltese Government was being scrupulously careful to prevent any act of racial discrimination.

53. In response to a question from Mr. Vidas, he said that the European Convention for the Protection of Human Rights and Fundamental Freedoms was frequently invoked in the courts. Replies to the questions raised by Mrs. Sadiq Ali and Mr. de Gouttes would be given at a later stage, either in writing or in the next report.

54. Owing to the form in which the censuses were currently conceived, it was not possible to give a reply to the question raised by Mr. Vidas concerning the ethnic composition of the Maltese population.

55. Mr. BANTON said that such information need not necessarily be derived from a census. A competent person would be able to make an approximate

estimate of the size of the various groups which made up the Maltese population, as well as of the numbers of tourists and seamen in transit through the island.

56. Mr. VELLA (Malta) said that such an estimate would be included in the next report.

57. The CHAIRMAN thanked the representative of Malta for his co-operation and expressed the hope that a reply would be given at a later stage to Mr. Wolfrum's question on the declaration provided for under article 14 of the Convention.

Mr. Vella and Mr. Valentino (Malta) withdrew.

58. Mr. VIDAS proposed that for its assessment of the eighth and ninth periodic reports of Malta (CERD/C/171/Add.2), the Committee should first note that there had been a positive development since the presentation of the seventh report of Malta; secondly, it should also note an improvement where the quality of the report was concerned; thirdly, it should express its continuing divergence of opinion with the Maltese Government regarding the mandatory nature of article 4; fourthly, it should regret the continuing lack of data on the ethnic origins of the population.

59. Mr. YUTZIS said he could endorse the points that had just been enumerated. He pointed out that the absence of demographic data had been noted repeatedly in the reports of States parties. Yet such data could be submitted on the basis of simple calculations, as had just been suggested by Mr. Banton. It would be useful to make a more thorough study of what method should be adopted to remedy that situation.

60. Mr. FERRERO COSTA also noted that the problem was a persistent one. Another frequent problem was the tendency of States parties and their representatives to claim that there was no racism in their country; that was a position that the Committee rejected on principle. He suggested that, in connection with the consideration of Malta's report, the Committee might make a general statement on the subject. He agreed with Mr. Yutzis that no social system could guarantee the absence of discrimination.

61. Mr. VIDAS shared the views expressed by the previous two speakers. He noted that the reports the Committee had just considered, those of Uruguay and Malta, had two features in common: they contained statements that there was no discrimination in the country, and they included no demographic data. Perhaps an amendment could be made to the Committee's general guidelines to avoid the recurrence of such a situation.

62. Mr. WOLFRUM associated himself with those comments, and said that the Committee must reject both the claim that there were no ethnic groups in the country and the claim that there was no racial discrimination. A general recommendation to that effect might be made.

63. Mr. de GOUTTES reminded the Committee that on the previous day he had already raised the questions mentioned by Mr. Wolfrum; he accordingly supported him, as well as the previous three speakers.

64. Mr. YUTZIS said he would like action to go further than a recommendation. Even if the Committee were to ask States parties to stop claiming that there was no racial discrimination on their territory, it was to be feared that they would continue to do so. In order to prove them wrong, the Committee should therefore undertake its own investigations. Such investigations could be entrusted to the country rapporteurs, whose designation had already enhanced the Committee's consideration of reports.

65. Mr. LECHUGA HEVIA objected that it was not for the Committee to tell States parties what they should or should not say; all it could do was to accept, or not to accept, what they said. Members of the Committee were agreed in thinking the contention that no discrimination existed in a country was false; however, the Committee could not prevent a State party from making such a claim.

66. Mr. LAMPTEY pointed out that the Committee had already made a recommendation with regard to the presentation of demographic data in reports. As far as the other aspect of the matter under discussion was concerned, while the consensus was to reject claims that racial discrimination was non-existent in a particular country, it would be difficult to make a recommendation on the subject, as had been pointed out by the previous speaker. Cuba, for example, had stated in its report that its social system went against racial discrimination, but that did not rule out the possibility of such discrimination on the part of an individual. The Committee had also heard Islamic countries assert that Islam excluded racial discrimination; however, it was well known that slavery had persisted in Mauritania until recently. There was clearly a consensus in the Committee not to accept claims by a State party that racial discrimination on its territory was non-existent; however, it would be difficult to express that consensus in the form of a recommendation.

67. Mr. FERRERO COSTA agreed that it was risky to attempt to advise States on what they ought to say. As had been pointed out by Mr. Lamptey, there was already a Committee recommendation on the matter of demographic data; however, that recommendation could well be repeated.

68. Mr. SONG Shuhua shared the view that no country could claim to be immune from racial discrimination in any form, but agreed with Mr. Lamptey that any attempt to prevent States from saying so might provoke negative reactions. It would be better to keep to the practice followed to date.

69. The CHAIRMAN noted that a clear consensus had emerged from the debate that no State party could contend that its social or political system rendered racial discrimination impossible; however, that consensus should find expression in the Committee's comments on the reports of States, rather than in a general recommendation. Where demographic statistics were concerned, such data, as had been pointed out, were already called for under the Committee's guidelines, but it should not be overlooked that the attitude adopted by States parties in that regard varied: some claimed that to emphasize ethnic distinctions might aggravate existing divisions within their

population. The question was a delicate one, and should be dealt with by persuasion rather than by confrontation. It would therefore be better to keep to the Committee's existing practice. However, if it was the Committee's wish to repeat its recommendation on the subject of demographic data, he would suggest that Mr. Ferrero Costa, together with other Committee members, should draft a text with a view to including a paragraph on the matter in the Committee's report to the General Assembly.

It was so decided.

The meeting rose at 5.40 p.m.

CERD/C/SR.898
13 March 1991

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Thirty-ninth session

SUMMARY RECORD OF THE 898th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 11 March 1991, at 10 a.m.

Chairman: Mr. SHAHI

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Action by the General Assembly at its forty-fifth session

(b) Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights (General Assembly resolution 45/85)

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The meeting was called to order at 10.20 a.m.

ACTION BY THE GENERAL ASSEMBLY AT ITS FORTY-FIFTH SESSION (agenda item 2)

(b) EFFECTIVE IMPLEMENTATION OF INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS, INCLUDING REPORTING OBLIGATIONS UNDER INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS (GENERAL ASSEMBLY RESOLUTION 45/85)

Report of the third Meeting of persons chairing the human rights treaty bodies (A/45/636)

1. The CHAIRMAN reminded members that the third Meeting of persons chairing the human rights treaty bodies, convened by the Secretary-General in October 1990, had adopted a number of useful conclusions and recommendations which had been approved by the General Assembly; they were contained in the report of that Meeting (A/45/636) and included consolidated guidelines for the initial part of the reports by States parties to all human rights treaty bodies. It remained for the Committee to determine the manner in which the consolidated guidelines should be incorporated into the Committee's own revised general guidelines (CERD/C/70/Rev.1).

2. Mr. BANTON said that a four-member working group, in which he had participated, had been set up to consider that question and report back to the Committee. The group recommended the adoption of the consolidated guidelines contained in the appendix to document A/45/636 as part I of its own guidelines. Part I would thus still be entitled "General" and would comprise the four new sections contained in the consolidated guidelines. The group further recommended that part II of the Committee's revised general guidelines entitled "Information in relation to articles 2 to 7 of the Convention" should remain as it was, but be preceded by paragraph (a) of former part I.

3. The CHAIRMAN said he took it that the Committee agreed to the working group's recommendations.

It was so agreed.

4. Mr. BANTON said that he had a further suggestion of his own to make. At the current and previous sessions, a number of reporting States had omitted data about the demographic composition and ethnic characteristics of their population on the grounds that such data were not included in the national census and that they did not wish to draw attention to factors such as race lest that should reinforce divisions they wished to overcome. The Committee had not been satisfied with such responses, considering that ethnic characteristics were of particular significance in monitoring the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination. Since the Committee was in the process of reviewing its guidelines to reporting States, he felt that now was a good time to reflect its views about the need for such data in the new version of the guidelines. He would circulate his proposals in writing to Committee members; they could not be incorporated into the text of the consolidated guidelines already approved by the General Assembly, but might appropriately be added at the end of the new part I of the Committee's general guidelines.

5. Mr. FERRERO COSTA endorsed the working group's proposal and agreed that the question of the provision of data on demographic composition should be included in the new guidelines as well as being the subject of a recommendation by the Committee. Mr. Banton's proposal seemed to meet the Committee's concerns on the subject, but would first need to be examined by the Committee. It would serve as a basis for the Committee's guidelines on demographic composition and, for reasons of consistency for the relevant Committee recommendation.

6. Mr. ABOUL-NASR requested further clarification and a thorough examination of the proposed text before a final decision was reached.

7. Mr. VIDAS expressed support for Mr. Banton's proposal, with the proviso that the text should be carefully studied prior to its insertion in the final version. He agreed with Mr. Ferrero Costa that it might serve as a basis for a recommendation by the Committee.

8. The CHAIRMAN, summing up, explained that part I of the Committee's revised guidelines would now be replaced by the consolidated guidelines approved by the General Assembly, with the proposed addition of a text, to be circulated by Mr. Banton and discussed by the Committee, at the end of part I. The final version of the guidelines, comprising parts I and II, would be sent to States parties.

9. Mr. LAMPTEY said that he reserved his opinion on the failure by one or two States parties to provide information requested by the Committee. Mr. Banton's most recent proposal constituted a further revision of the revised guidelines to which the Committee had agreed and would therefore require careful study.

10. Mr. YUTZIS wished to know whether the matter under consideration was one of form or substance. His understanding was that a consensus had been reached on the content of the guidelines, but there now seemed to be some question of re-opening the debate. Referring to Mr. Lamptey's comments, he said that the question of demographic and other social indicators was one that had frequently arisen in the Committee; it was a matter of great interest to him and no doubt to many States parties as well. He agreed that time should be taken to consider the proposals and discuss the matter in depth.

11. The CHAIRMAN said that the question was one of both form and substance, since the consolidated guidelines approved by the General Assembly would form part I of the questionnaires of all human rights treaty bodies. Since Mr. Banton was now proposing the addition of a new substantive text to part I, he suggested that a full exchange of views should take place once Mr. Banton's text had been circulated.

12. Mr. RESHETOV said that any discussion on new guidelines to improve national reporting would be merely an academic exercise unless the Committee concomitantly agreed upon the manner of dealing with the reports it did receive. Their quality varied greatly, as did the oral presentations and responses of the representatives of reporting States. In some cases no

representatives were sent at all, and the Committee none the less proceeded to examine the reports. Agreement should be reached on some method of evaluating the extent to which reports were consistent with the guidelines.

13. Mr. ABOUL-NASR said that the Committee seemed to be working with various proposals or sets of proposals, which caused some confusion. The competent departments or ministries in the reporting countries must have before them a single set of clear guidelines. States' data collection capabilities must also be taken into account when requesting details of ethnic characteristics; their task should be made easier, not more difficult. He also questioned the use of the term "consolidated".

14. The CHAIRMAN explained that the purpose of the consolidated guidelines, applicable to all six human rights treaty bodies, was precisely to facilitate the work of reporting States. A variety of other measures, including training programmes, had also been recommended to assist Governments in fulfilling their reporting obligations. The only matter still pending was the final wording of part I of the guidelines; that would be deferred until Mr. Banton's proposals had been circulated.

15. Mr. LAMPTEY said he would welcome some clarification of the position. The Committee had already agreed to the proposal by the working group that the new, consolidated guidelines should replace part I of the existing revised general guidelines. Only paragraph (a) of part I was to be incorporated in part II. The difficulty was that Mr. Banton had just made a suggestion of a quite different kind from anything that had been discussed in the working group. He himself did not see the need for such a suggestion, since paragraph 1 of the new, consolidated guidelines already called for information on the ethnic and demographic characteristics of the country concerned; the only difference was that Mr. Banton's proposal went further, in making reference to States which did not collect information on ethnic characteristics in censuses. Paragraph 1 as already drafted contained everything that was essential and should be retained as it stood.

16. Mr. FERRERO COSTA agreed that there was no need to re-open discussion on the whole text of the new, consolidated guidelines. All that was needed was to reach agreement on Mr. Banton's proposed text, and that could best be done after it had been circulated and members had had the opportunity to study it.

17. The CHAIRMAN agreed that that would be the best procedure. He noted, in relation to the recommendation in paragraph 66 of the report (A/45/636), that the manual on reporting drawn up by the United Nations Institute for Training and Research (UNITAR) was currently being printed and would be disseminated by the Secretariat.

18. He invited views on the recommendation in paragraph 55, that the Secretary-General and the General Assembly should do their utmost to ensure that more resources were provided for Secretariat servicing, so as to enable treaty bodies to function effectively.

19. Mr. BANTON pointed out that the Committee might wish certain of its members to serve as special rapporteurs for other treaty bodies. Their ability to perform that task in a private capacity might depend on the

willingness of the Centre to provide them with a modest amount of financial support. He hoped that on the matter of financing, the Centre's approach would not be as inflexible as it had been in the past.

20. The CHAIRMAN said he was sure the Secretariat would take note of that observation. He drew attention to the recommendation in paragraph 57 of the report that consideration should be given to the appointment of members of the Committee to be responsible for following developments in other treaty bodies and reporting thereon. It was also recommended that the possibility of joint sessions of working groups of two or more committees might be explored.

21. Mr. WOLFRUM pointed out that paragraphs 22, 23, 24 and 26 of the report contained an account of the views expressed by the Meeting of chairpersons on the whole matter of interaction between human rights treaty bodies; he fully endorsed those views.

22. Mr. FERRERO COSTA supported the recommendation that certain members be designated to report on developments in other human rights bodies on racial discrimination. In future, such reports should constitute the first item on the agenda, as they would form a very useful background to subsequent discussion.

23. Mr. VIDAS said he, too, supported the recommendation. It would be very helpful if the Secretariat could make a list of all the treaties and treaty bodies concerned, so that the details of the reporting procedure could be worked out at the current session.

24. Mr. LAMPTEY said that, as he understood it, the reporting manual now in course of preparation would include details of the conventions that were of relevance to the work of the various human rights bodies. The Committee should therefore await publication of that manual. He would like to know precisely what kind of reporting procedure was envisaged, particularly since Mr. Banton had referred to the possible need for financial support. Would an observer from the Committee need to be present throughout the deliberations of the bodies concerned?

25. Mr. RHENAN SEGURA said he would be glad to volunteer as one of the rapporteurs, since he was the only member of the Committee resident in Geneva, and in any event was required by his Government to attend meetings of other human rights treaty bodies. However, he would welcome clarification as to just what would be expected of him.

26. The CHAIRMAN explained that the Meeting of chairpersons had agreed it would be useful if each of the human rights bodies kept in touch with any work in its own area of interest being done by the others, and if individual members could be assigned liaison duties. What was wanted was not a detailed report, but rather that the Committee should be kept aware of whether any matters of relevance to it had been discussed. Although the Committee was the main body concerned with racial discrimination, there were other aspects of that subject that were dealt with in other human rights bodies.

27. Mr. YUTZIS said he too would like to volunteer to participate in the reporting exercise. Members of the Committee could consult among themselves

to decide which of them should attend which of the bodies concerned. He suggested that there should be a reciprocal arrangement, whereby members of other treaty bodies should be represented on the Committee, to facilitate dialogue. The object of the reporting exercise should be not merely to monitor what was happening in other treaty bodies on subjects of interest to the Committee, but to avoid unnecessary duplication of effort, and to break the long-standing habit of keeping different aspects of the same subject in watertight compartments in separate committees. That would enable the United Nations system to make savings of time, staff and money.

28. Mr. LECHUGA HEVIA suggested that the Centre for Human Rights should be asked to notify members whenever matters of concern to the Committee were being discussed in other bodies, since it had access to all the information.

29. Mrs. KLEIN-BIDMON (Representative of the Secretary-General) said the Secretariat would be glad to make available to each individual rapporteur the documentation submitted to the human rights body he had agreed to monitor, as well as the summary records reflecting the discussions. It would then be for that rapporteur to extract any information he felt might be useful to the Committee; it would not be necessary for him actually to attend meetings, which might give rise to problems of financing.

30. Mr. FERRERO COSTA thanked Mrs. Klein-Bidmon for that clarification. He would be pleased to act as one of the rapporteurs.

31. Mr. de GOUTTES fully agreed that liaison with other human rights bodies was essential; he was only concerned with how such liaison could be carried out in practice. One method was the one just suggested, whereby the task of the rapporteur would simply be to sum up the content of the other body's documentation on the Committee's behalf. The second method, which might give rise to difficulties, would be that the rapporteur would actually participate in some or all of the meetings of the body in question, and indeed it had been proposed that financing should be provided for that purpose. The question was important and should be discussed.

32. He himself was ready to volunteer to participate, on the understanding that attendance at meetings would not be essential.

33. The CHAIRMAN said he wished to make it clear that there could be no question of the Committee participating in the deliberations of another human rights body; such participation would be unconstitutional. All that was proposed was that each volunteer should keep abreast of developments in the Committee concerned, by studying the documentation and perhaps through informal contacts.

34. Mr. VIDAS said he, too, was willing to volunteer as a rapporteur.

35. Mr. SONG Shuhua asked whether all the documentation from all the other human rights bodies could be made available in the Committee room, so that members could consult it.

36. Mrs. KLEIN-BIDMON (Representative of the Secretary-General) said it might be difficult to supply members with all the documentation relating to all the

other human rights bodies; however, the Centre could provide the annual reports of such bodies as soon as they became available, together with their press releases.

37. Mr. YUTZIS said the idea now under discussion deserved most careful consideration because it opened up the possibility of making changes in the structure of bodies in the United Nations system. Such an objective might seem Utopian, but at a time when pragmatism seemed to be the rule, some redressing of the balance towards Utopianism might be in order.

38. By offering to serve as rapporteurs, members would not necessarily be assuming any strictly-defined obligations. There was no need for the reporting system to follow a prearranged structure: the Committee could simply see how it worked out in practice and in time draw up guidelines on the best procedure to follow.

39. Mrs. SADIQ ALI volunteered as a rapporteur.

40. The CHAIRMAN, noting that he now had several volunteers, suggested that they should consult among themselves and advise him which committees they had chosen to monitor.

41. Mr. ABOUL-NASR pointed out that there were other bodies dealing with the subject of racial discrimination in a number of the specialized agencies, notably ILO. It would be very useful if the volunteers could also follow up the work being done by those bodies, since the Committee did not normally receive information from them.

42. The CHAIRMAN pointed out that the Committee was considering the report of the third Meeting of persons chairing the six United Nations human rights treaty bodies. To ask the Committee's volunteers to follow the deliberations of human rights bodies in the specialized agencies would be excessive. In any case, the Under-Secretary-General for Human Rights held consultations with the agencies on matters relating to human rights, and representatives of ILO and UNESCO could keep the Committee informed of any significant developments relating to racial discrimination within their organizations. The volunteers should therefore meet and subsequently let him know what arrangements they had made among themselves.

43. The question of holding joint sessions of working groups of two or more committees to explore a specific issue could perhaps be considered at a later stage. The Committee must, however, consider immediately the recommendation that in preparing "general comments", "general recommendations" or "suggestions" on topics that were of potentially major relevance to the provisions of an instrument that was supervised by another body, the committee concerned should consider undertaking some appropriate form of consultation before finalization of the text in question.

44. Mr. WOLFRUM said he assumed that the chairpersons' recommendation implied, for instance, that before the Human Rights Committee took a decision relating to article 27 of the International Covenant on Civil and Political Rights, it should approach the Committee on the Elimination of Racial Discrimination. Did that, however, mean that the Human Rights Committee would

be bound by the views of the Committee on the Elimination of Racial Discrimination or, in general, that any one human rights treaty body could be bound by a decision of another? His answer on this question was negative. The other treaty bodies should, however, get access to information gained by committees dealing with similar or related items. At least one case decided in the Human Rights Committee would have probably been resolved rather differently if that Committee had had access to all the material available to the Committee on the Elimination of Racial Discrimination.

45. The CHAIRMAN said he interpreted the recommendation to mean that if the Committee drew up a general comment, general recommendation or suggestion on the kind of topic mentioned, it would draw on material available to the appropriate treaty body.

46. He invited the representative of the Secretary-General to provide some information concerning the periodicity of the Meetings of chairpersons.

47. Mrs. KLEIN-BIDMON (Representative of the Secretary-General) explained that the General Assembly had endorsed the recommendation that Meetings of persons chairing human rights treaty bodies should be held on a routine basis. It had not specified how often, but the Commission on Human Rights had adopted a resolution requesting that such Meetings should be held biennially.

48. The CHAIRMAN, referring to the recommendation that as far as possible and appropriate the supervision of new human rights treaty obligations should be entrusted to one or other of the existing treaty bodies, explained that the chairpersons had considered that too many treaty bodies were being created. The recommendations concerning the proposed world conference on human rights would be discussed at a later stage. The recommendation regarding the availability of reports submitted to treaty bodies and of the summary records of the meetings at which they were considered was a matter for the Centre for Human Rights, as was the recommendation regarding training programmes for officials of United Nations bodies and agencies involved in technical cooperation programmes. The Committee could take note of them. The report also contained statements relating to the ratification of human rights instruments, overdue reports, the financial situation, funding, the need for more resources and other matters on which members might wish to comment.

49. Mr. VIDAS observed that at a previous session there had been an exchange of views on the very important issue of the sources of information available to the treaty bodies. The statements made on that subject in paragraphs 38-42 of the chairpersons' report would have to be considered, particular attention being paid to ways of improving the provision of information by NGOs and other United Nations agencies.

50. The CHAIRMAN said that there had been a long debate on that subject at the third Meeting of chairpersons. He himself had pointed out the problems involved in drawing on information from non-governmental sources. After considerable discussion, the other five chairpersons had come to the conclusion that it was for each body to decide what information to draw on, and it had been unanimously agreed that information from NGOs should not be excluded. In the Committee's consideration of the report of China, for instance, documents prepared by NGOs had been circulated and used. In any

case, since it was stated in paragraph 40 of the report that any relevant documentation of the General Assembly, the Security Council and other United Nations organs should also be made available to the treaty bodies when deemed pertinent to their activities, it was clear that the Committee did not depend entirely on information given by the State party in its report. A further clarification of the position was given in paragraphs 42 and 68 of the report before the Committee.

51. Mr. YUTZIS pointed out that at the latest session of the Commission on Human Rights, the Chairman, in his closing address, had described NGOs as the "oxygen" of the United Nations human rights programme. He agreed with that assessment and therefore fully supported the statements made in paragraphs 42 and 68 of the report. A full discussion of the use that could be made of information supplied by NGOs could be held at a subsequent meeting.

52. The CHAIRMAN said that the Committee could, of course, consider the matter whenever it saw fit to do so. At the Meeting of chairpersons he had tried to safeguard the Committee's position through the inclusion of the sentence "It was, however, agreed that the type of information needed and the way to handle it would have to be decided by each committee in the light of its own requirements and circumstances" in paragraph 42 of the report.

53. Mr. FERRERO COSTA drew attention to the important recommendation contained in paragraph 55.

54. The CHAIRMAN said that he did not intend to take up the matter of the Committee's finances. The General Assembly had recommended the establishment of a contingency reserve fund and the matter had been referred to States parties. There would be no point in the Committee's discussing it until their response was known. The Secretariat might wish to explain the situation.

55. Mrs. KLEIN-BIDMON (Representative of the Secretary-General) explained that the idea of the contingency reserve fund had originated in the Commission on Human Rights at its 1990 session. The General Assembly, at its forty-fifth session, had requested the Secretary-General to seek, at the earliest possible date, the agreement of States parties to the establishment of the fund, which would only be a temporary measure and would not provide a permanent solution to the Committee's financial problems. If States parties concurred, excess monies in the Committee's account at the end of a year would not be credited back to States parties which had overpaid but would be placed in a contingency reserve fund to finance the meetings of the Committee for up to two years if the contributions from States parties were insufficient to cover the cost. The Secretary-General was currently preparing notes verbales to request the concurrence of States parties. It was to be hoped that the Committee would thus be able to meet more regularly. As a final solution to the problem, the chairpersons of the human rights treaty bodies had suggested that all such bodies that were now financed partially or totally by States parties should be financed out of the United Nations regular budget. That question had been taken up by the General Assembly at its latest session and a relevant paragraph had been inserted in General Assembly resolution 45/85. The Commission on Human Rights had also considered the matter and had requested the Secretary-General to explore means of financing from the regular budget

human rights treaty bodies that were currently financed by States parties, but nothing had yet been settled. The contingency reserve fund should alleviate the Committee's difficulties for the time being.

56. Mr. SHERIFIS thanked the previous speaker for her explanation but said that it did not cover the recommendation contained in paragraph 54 of the report regarding the full funding of human rights treaty bodies from the regular budget of the United Nations. Since it was not clear how many States parties would overpay their dues, there was no certainty that the contingency reserve fund would solve the problem. The issue should therefore be reconsidered at an appropriate time at the present session. There was no need to wait and see how the proposed new system worked out in practice.

57. The CHAIRMAN said that he would bear that in mind. He invited the Committee to take note of the recommendation concerning the briefing of newly elected members of the Committee contained in paragraph 64 of the report and of the recommendation concerning the distribution of the annual reports of each of the other treaty bodies to each member of each treaty body contained in paragraph 71.

Universal ratification of, or accession to, the Convention (draft resolution of Mr. Banton)

58. Mr. BANTON said that in view of new information that had come to light, he wished to withdraw his draft resolution. He suggested that the topic should be discussed under agenda item 7 (Second Decade to Combat Racism and Racial Discrimination).

Regional reviews of progress and the information received by the Committee

59. The CHAIRMAN noted that Mr. Banton had made a proposal in connection with the sub-item under consideration in November 1990.

60. Mr. BANTON said that his proposal was a revival of a proposal put forward by the then Rapporteur in 1971, when nine members of the Committee had supported it and only one had opposed it. However, nothing much had come of it, probably owing to lack of resources. The proposal had been that a comparative index should be prepared so that the information that came in from States parties would be recorded according to each article of the Convention, in such a way that it would also permit comparisons to be made between different States parties. If such an operation had been carried out, it would have been much easier for the Committee to have available, in a single place, the kind of information that it might want in order to assess either how well a particular State party was responding to the views expressed when its reports had been considered or how different States parties implemented different articles of the Convention.

61. The Committee now had a large stock of information available from States parties' reports; the problem was to digest it all. He was therefore proposing that, as a first step, the Committee should make a regional review, starting with Europe, of how well States parties were meeting the requirements of the Convention and that it should designate one or more of its members to serve as special rapporteurs for that purpose. The Committee could then move

on to other regional groups. In Europe, the problem of non-accession to the Convention was very small since only Albania, Ireland and Switzerland were not parties.

62. The CHAIRMAN said that Mr. Banton, in his paper on "CERD in the 1990s", had pointed out that the International League for Human Rights had published a briefing paper about CERD in October 1988 which had questioned whether it made any difference if CERD met less often or perhaps not at all, and had asked why the United Nations regular budget should support a separate treaty body whose reputation was not the highest of human rights bodies in the United Nations. Mr. Banton had also drawn attention to the possibility that the Committee might add to its report a section dealing with the status and implementation of the Convention in a particular region.

63. Mr. LAMPTEY said that he had problems with the regional proposals in the paper. In his view, the Committee should not concern itself with States which had exercised their sovereign right not to accede to the Convention.

64. Mr. ABOUL-NASR asked whether Mr. Banton was making a specific recommendation.

65. Mr. BANTON said that the question of States not parties to the Convention was incidental and could for the moment be ignored. What he was suggesting was that a digest should be made of the information the Committee had received from States indicating what action they had taken to comply with the requirements of the Convention.

66. Mr. ABOUL-NASR said that the Committee was already taking action on those lines. Every time a report was received from a State, the Committee decided whether the State had met its commitments under the Convention.

67. Mr. BANTON said that a study of the reports of the Western European States, including the question of racial discrimination in connection with the right to work, showed that it was difficult to interpret much of the material in those reports. He found that much of the information furnished to the Committee was difficult to understand and would benefit from synthesis. Interpretation might be furthered by the global compilation of legislation, but it would be a useful function for the Committee to include in some of its reports to the General Assembly information on how the Convention was being implemented in specific regions. He requested that discussion of the question should be deferred pending further consideration.

68. Mr. LAMPTEY said that the criticism expressed by the International League for Human Rights and quoted by the Chairman was unfair. A number of NGOs would like to change the composition and terms of reference of the Committee and in general act as if it was an entity like themselves. In other words, they wanted to turn the Committee into a political body. The Committee could not, however, be compared with an NGO. The Committee had in fact been very effective and had been the first machinery established for the implementation of a human rights treaty.

69. The CHAIRMAN said that, if there was no objection, he would take it that the Committee wished to postpone discussion of Mr. Banton's paper "CERD in the 1990s" pending further consideration.

It was so decided.

70. The CHAIRMAN drew the attention of the Committee to the report of the Secretary-General on the financial situation of the Committee contained in document A/45/579, the annex of which set out the list of assessments outstanding from States parties as at 30 September 1990. Paragraph 3 of the document referred to the possibility of establishing a contingency reserve fund as a temporary expedient. The General Assembly had not really addressed that issue.

71. Mr. SHERIFIS said that the basic question was not the outstanding dues of individual States parties, but that raised in paragraph 54 of the chairpersons' report (A/45/636), namely, that consideration should be given to amending the relevant provisions of the International Convention on the Elimination of All Forms of Racial Discrimination to provide full funding from the regular budget of the United Nations. That was a major question and called for consideration in depth; otherwise there would simply be a repetition of the discussion which had taken place at every recent session on how to make countries pay up.

72. The CHAIRMAN said that the General Assembly had approved the report of the chairpersons as a whole but had failed to take action on the specific question of funding from the regular budget.

73. Mrs. KLEIN-BIDMON (Representative of the Secretary-General) said that in resolution 45/85 the General Assembly had endorsed the recommendations of the chairpersons and had referred to funding from the regular budget, as had the Commission on Human Rights at its recently concluded session. Two draft resolutions would be available for the Committee's consideration the following day.

74. The CHAIRMAN said that the matter would be discussed further at a subsequent meeting.

(a) ANNUAL REPORT SUBMITTED BY THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION UNDER ARTICLE 9, PARAGRAPH 2, OF THE CONVENTION

75. Mr. BANTON, introducing the sub-item, said that he would divide his comments into three sections. The first section would be a factual summary of the debate in the General Assembly on the 1990 report. The second would relate to two questions which had arisen in the course of the debate and on which the Committee might wish to consider taking further action. And the third would relate to general questions which had arisen in connection with the General Assembly's debate.

76. The report had been considered by the General Assembly together with items on the implementation of the Programme of Action for the Second Decade and on self-determination and decolonization. More than half the speakers had referred to the work of the Committee, generally in favourable terms, and had

said that it played an indispensable role in combating racial discrimination and that its work was of the utmost significance. One representative had said that the Committee's success was mainly due to its observance of two principles, namely, that it should remain within the scope of the Convention and that it should work in a fair and unbiased manner. Most speakers had spoken of the Committee's financial difficulties, and a smaller number had referred to the number of overdue reports and had urged States parties to comply with their obligations. In resolution 45/88, the General Assembly had taken note with appreciation of the report of the Committee on the work of its thirty-eighth session and had requested the Secretary-General to take certain steps with regard to the Committee's future financing.

77. The first of the two questions which had arisen in the Assembly's debate related to remarks made by the representative of Yugoslavia, who had expressed dissatisfaction with errors and omissions in the part of the report (A/45/18) which concerned the ninth and tenth reports of Yugoslavia. As it was not known how such errors or omissions might have arisen, the Committee might wish to consider using its powers under article 9 to request the Government of Yugoslavia for further information. He understood, however, that there had already been correspondence between the Secretariat and the Mission of Yugoslavia on the question. The second item related to a statement by the representative of Fiji, who had said that his country's new Constitution emphasized human rights regardless of race or colour. He had learnt from the representative of the Secretary-General that the procedure for requests for additional information was not much different from that for issuing reminders to States parties. He would like to ask the Secretariat to consider adding a request for further information on the new Constitution to the next reminder to Fiji.

78. Referring to more general matters, he said that in the past the Committee had asked the General Assembly to consider its report as a separate item and requested that a member of the Committee should be present during the debate to speak on the report. It seemed unlikely, however, that there would be any change in that regard and it would not be useful to press those requests. The matter was not important except that perhaps, in a case in which the Committee had adopted a resolution asking for something unusual, it might request that a member should be present at the debate in order to elaborate on the resolution. For example, under the item on the Second Decade, the Committee might request additional powers. He would submit a draft resolution on that question for consideration by the Committee.

79. On the question of the quality of the dialogue between the Committee and the General Assembly, members would note that States not parties to the Convention rarely commented on the Committee's report in the Third Committee. At times, the debate in the Third Committee reflected matters of current concern, such as, for example, matters concerning the conflict in the Gulf in the autumn of 1990. On the whole, however, delegations seemed to look only at the parts of the report referring to their own country and to take little interest in other parts of the report. That would appear to suggest that, if the quality of the dialogue between the Committee and the Assembly was no higher than at present, it might be because the Committee was not presenting its views in a stimulating way. That was not his view, however, because the Committee's most recent annual report had included two general

recommendations (VIII and IX) which, it might have been thought, should have prompted some comment in the Assembly but had not in fact done so. His conclusion therefore was that, even if the dialogue as reflected in the discussion in the Third Committee had its shortcomings, the Committee should not seek to change the manner in which it reported. There might be some ways in which it could draw greater attention to its reports, but the current situation could on the whole be regarded as satisfactory.

80. Mr. HOUSHMAND (Representative of the Secretary-General), referring to Mr. Banton's comment on Yugoslavia, said that the representative of that country had indeed drawn the attention of the Secretariat to the fact that his statement on Yugoslavia's ninth and tenth reports had not been adequately reflected in the Committee's report to the General Assembly. The Secretariat had informed the Yugoslav representative that the Committee's report had been based on the summary records of the meeting at which his country's reports had been considered and, as the report had been adopted by the Committee before being submitted to the Assembly, it could not be changed; if, however, the Government of Yugoslavia wished to correct the summary record in question, it could do so by submitting a correction to the Official Records Editing Section. A correction had subsequently been submitted.

81. Referring to the proposed request to the Government of Fiji to furnish the text of the new Constitution, he observed that a number of reports from Fiji were in fact overdue; if the Committee so wished, the Secretariat could send a reminder which would include a request to the Government to transmit the text in question.

82. Mr. ABOUL-NASR said that in recent years summary records of the Committee's meetings had been received very late and there had been no time to correct them in order to ensure that any omissions were rectified in the Committee's report to the General Assembly. He hoped that the Secretary-General would take action to expedite the distribution of summary records.

The meeting rose at 1 p.m.

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Thirty-ninth session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 899th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 11 March 1991, at 3 p.m.

Chairman: Mr. SHAHI

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Submission of reports by States parties under article 9, paragraph 1, of the Convention (continued)

Second Decade to Combat Racism and Racial Discrimination

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* The summary record of the first part (closed) of the meeting appears as document CERD/C/SR.899.

The public meeting was called to order at 3.15 p.m.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 9, PARAGRAPH 1, OF THE CONVENTION (agenda item 3) (continued)*

1. The CHAIRMAN invited the Committee to resume consideration of the matters which the Bureau had recommended be examined under item 3 and which had been left pending, namely the question of technical assistance and the model report proposed by Mr. Banton.

Technical assistance

2. Mr. FERRERO COSTA read out a draft recommendation concerning technical assistance, drafted by himself and Mr. Wolfrum:

> "The Committee on the Elimination of Racial Discrimination,
>
> Taking note of the recommendation of the third meeting of persons chairing the human rights treaty bodies as endorsed by the forty-fifth session of the General Assembly, to the effect that a series of seminars or workshops should be organized at the national level for the purpose of training those involved in the preparation of State party reports;
>
> Concerned over the continued failure of certain States parties to the International Convention on the Elimination of All Forms of Racial Discrimination to meet their reporting obligations under the Convention;
>
> Believing that training courses and workshops organized on the national level might prove of immeasurable assistance to officials responsible for the preparation of such State party reports;
>
> Requests the Secretary-General to organize, in consultation with the States parties concerned, appropriate national training courses and workshops for their reporting officials as soon as practicable;
>
> Further recommends that the services of the staff of the Centre for Human Rights as well as of the experts of the Committee on the Elimination of Racial Discrimination should be utilized, as appropriate, in the conduct of such training courses and workshops."

3. Mr. ABOUL-NASR said that, while he was in favour of the draft recommendation, he believed that the Committee should be informed of its financial implications before adopting it, as was required under the rules of procedure.

4. Mr. FERRERO COSTA said the question had already been extensively discussed in the presence of representatives of the Secretariat, notably the representative of the Secretary-General, who had indicated that the necessary funding was available.

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* Resumed from the 891st meeting.

5. Mr. RESHETOV also thought that the Committee should wait until it knew exactly what the financial implications of the recommendation would be before taking a decision.

6. Mr. HOUSHMAND (Representative of the Secretary-General) said that the Secretariat would respond favourably to the recommendation, which would be implemented within the framework of its programme of advisory services and technical assistance in the field of human rights. He pointed out that the training courses and workshops would be financed out of the regular budget of the Organization and out of the United Nations Voluntary Fund for Technical Assistance, and would consequently not entail any additional expenditure.

7. The CHAIRMAN said that, if there were no objections, he would take it that the recommendation was adopted.

It was so decided.

8. Mr. BANTON reminded the Committee that he had already introduced his proposed model report, which was contained in a document without a symbol that had already been distributed in English to members of the Committee. In the light of the discussion that had taken place on the subject, he was prepared to revise the text, but would first like members of the Committee to confirm the report's usefulness for Governments.

9. Mrs. SADIQ ALI said she was in favour of preparing a model report, but would like some amendments to be made to the existing text. In particular, paragraph 9, concerning article 2 (p. 6), was too negative in tone, and might offend States parties. Paragraphs 12 and 13, which related to article 4 of the Convention, made no mention of the prohibition of organizations inciting to racial hatred. There should also be a reference in the same part of the model report to the need to increase the awareness of judicial and police officers on the subject. On page 10, in the paragraphs relating to article 5, the right to education should have been included alongside the right to work and the right to housing.

10. Mr. VIDAS recalled that Mr. Lamptey had already proposed that, before taking a decision, the Committee should await the publication of the reporting manual currently in preparation. He himself could accept the content of the model report, subject to the amendments suggested by Mrs. Sadiq Ali, but thought the text should be brought into line with the Committee's guidelines as well as with the manual in question.

11. Mr. de GOUTTES said he also found the model report useful; he would like the section beginning with paragraph 17 to deal with legal aid.

12. Mr. LAMPTEY said that, for the time being, he did not wish to express an opinion on the usefulness of the model report; he reiterated his view that it would be best to wait until the reporting manual became available.

13. Mr. SONG Shuhua thought the Committee should proceed with caution, and improve Mr. Banton's model report before distributing it.

14. Mr. YUTZIS noted that, although members of the Committee were agreed in finding Mr. Banton's work useful, they disagreed as to when the model report should be adopted. That being so, he would formally propose, in accordance with article 44, subparagraph (c) of the rules of procedure, that the debate on the model report should be adjourned until the next session, on the understanding that Mr. Banton, Mr. Rhenan Segura and Mr. Wolfrum would be given the task of revising it in the meantime.

15. The CHAIRMAN said that, if there were no objections to that motion, consideration of Mr. Banton's model report would be resumed at the Committee's next session.

It was so decided.

16. Mr. YUTZIS recalled that when he had proposed that consideration of the question be deferred until the next session, he had also asked that Mr. Banton, Mr. Wolfrum and Mr. Rhenan Segura should be given the task of continuing work on Mr. Banton's report, which would then serve as a basis for discussion when members of the Committee had read all the relevant documents.

17. The CHAIRMAN invited Mr. Banton, Mr. Wolfrum and Mr. Rhenan Segura to continue work on the drafting of the model report.

18. Mr. BANTON pointed out, in reply to Mr. Lamptey, that he had never claimed that his model report was necessary or essential, simply that it might prove useful for certain States. He emphasized that the drafting of such a report was a highly complex task, owing to the widely differing situations prevailing in the various countries.

19. Mr. LAMPTEY said it was essential that all members of the Committee should be in possession of all the relevant documents before taking a decision.

20. The CHAIRMAN assured members that they would be provided with all the necessary documents before the end of the current session.

The meeting was suspended at 4.15 p.m., and resumed at 4.40 p.m.

SECOND DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION (agenda item 7)

Contribution of the Committee on the Elimination of Racial Discrimination to the work of the World Conference on Human Rights (General Assembly resolution 45/155; A/45/636; E/CN.4/1991/43; E/CN.4/1991/63; E/CN.4/1991/L.11/Add.2 and Add.3)

21. The CHAIRMAN suggested that the Committee might have a preliminary discussion on its possible contribution to the work of the World Conference on Human Rights. He drew attention to the recommendations made on the subject by a number of different bodies. Those of the meeting of persons chairing the human rights treaty bodies were contained in paragraphs 48 and 67 of document A/45/636. The recommendations of the Seminar on the political, historical, economic, social and cultural factors contributing to racism, racial discrimination and apartheid were contained in paragraph 14, page 21, of

document E/CN.4/1991/63. The Under-Secretary-General for Human Rights, in his statement to the Committee at its 889th meeting, had given his views as to what the Conference's objectives should be. Resolutions 1991/20 and 1991/30, recently adopted by the Commission on Human Rights (E/CN.4/1991/L.11/Add.2 and Add.3, respectively), were also relevant. That list was not exhaustive, but it could serve as a basis for discussion.

22. Mr. BANTON drew attention to paragraphs 49 and 50 of document E/CN.4/1991/43, in which the Under-Secretary-General for Human Rights outlined the concerns which would be of importance for the World Conference on Human Rights.

23. Mr. HOUSHMAND (Representative of the Secretary-General) drew attention to paragraph 9 of General Assembly resolution 45/155, which dealt with the work of the Preparatory Committee. He read out paragraphs 1, 2 and 5 of resolution 1991/30, recently adopted by the Commission on Human Rights, as well as paragraph 4 of the annex thereto. In particular, the latter paragraph, which concerned preparations for the Conference, was of direct interest to the Committee, as were a number of recommendations addressed to the Preparatory Committee. The Preparatory Committee was to meet in Geneva from 9 to 13 September 1991, and the Committee would need to decide what contribution it wished to make to the preparatory process, how far it wished to participate either through its Chairman or another designated member, and what contribution it wished to make to the World Conference itself.

24. Mr. ABOUL-NASR said that, as he saw it, of the three tasks that the Committee would be called upon to perform in compliance with paragraph 10 of General Assembly resolution 45/155 - to assist the Preparatory Committee, to undertake reviews and submit recommendations, and to participate actively in the Conference itself - the second was the most important, and the Committee should begin to tackle it forthwith. What was involved was for the Committee to review its work and to seek ways of improving it, both in the field of human rights generally and in that of racial discrimination in particular. At the same time, it should also consider ways and means of rationalizing the work of the various bodies currently concerned with racial discrimination - the General Assembly, the Security Council, the Economic and Social Council, the Commission on Human Rights, the Sub-Commission, and the various committees. The Committee would not be able to accomplish that task in only two or three meetings, for problems of racism and racial discrimination, far from diminishing, were increasing in severity, were arising in all regions of the world, and were every day causing much suffering. First, therefore, the Committee should draft a general report on the human rights situation, notably in regard to racial discrimination, throughout the world; secondly, it should review its own work in that field, and formulate recommendations. While preliminary discussions were useful, at some point one or more members of the Committee would have to be entrusted with the preparation of a document for consideration by the Committee at its next session, before being reflected by the Secretary-General in his report to the Preparatory Committee. The latter was to meet in September 1991, the Committee itself in August. There was thus not much time left.

25. Mr. de GOUTTES agreed that there was a need to avoid overlapping with other United Nations bodies, and to do some work on methodology with a view to preparing for the World Conference.

26. Another idea put forward by the Under-Secretary-General for Human Rights that was worth study was the suggestion that liaison should be promoted between the Committee and other human rights bodies on the one hand, and on the other hand the national committees in the various countries which were combating various types of racial discrimination. There now existed in an increasing number of countries national bodies which incorporated both governmental organs dealing with questions of human rights and discrimination, and non-governmental organizations. National committees were of great importance, because any reports regarding discrimination which were received in the field were channelled through them. Where such bodies existed, it would be useful if the Committee could emphasize, first, that States should prepare their report in close liaison with them; and secondly, that States should involve the committees in the process of submission of their report, and should even include their representatives on their delegation to the Committee. A good example had been set at the current session by the Ukraine, whose delegation had included the Chairman of the Human Rights Commission of the Supreme Soviet of the Ukraine. It would also be useful to associate such committees with the work of the Conference itself.

27. Mr. FERRERO COSTA said that, basically, the Committee had three decisions to take. All members were agreed that the Committee should be represented at the World Conference on Human Rights. The first question to decide was who would represent the Committee in the Preparatory Committee. The best person would be the Chairman, or, should he be unavailable, one of the Vice-Chairmen. The person chosen would then represent the Committee throughout the various intermediary stages until the World Conference itself. The second question to be decided was what form the Committee's contribution to the World Conference's work should take. Clearly, its contribution should be concerned with matters specifically related to its terms of reference, namely the combating of racial discrimination. The most logical course would be to select certain subjects which seemed to the Committee particularly important, and to propose them to the World Conference. The topics chosen would depend partly on the particular area of expertise of the members who volunteered to undertake the task, but also on the knowledge gained by those members who had been following the work done by other committees on racial discrimination, and could thus ensure co-ordination. The subjects selected should also be related to the specific programme of the World Conference, as defined by the Preparatory Committee. Once specific subjects had been chosen, the Committee would need to designate special rapporteurs, each of whom would submit to the Committee a draft report on a specific theme. Those reports would then be considered by the Committee, and if possible adopted, together with the recommendations. Finally, a single report would be prepared, which would constitute the Committee's contribution to the work of the World Conference.

28. Mr. VIDAS considered that the Committee could not as yet go beyond the stage of preliminary discussions. At its August session, it would perhaps be in a position to consider fundamental questions concerning its contribution to the preparatory work of the Conference. Only when the Under-Secretary-General for Human Rights had been designated as Secretary-General of the Conference,

and thus Chairman of the Preparatory Committee, would members have a better idea what kind of contribution they should make to the Preparatory Committee, and, following that, to the General Assembly. Since the Under-Secretary-General had highlighted the question of racial discrimination and that of ways and means of improving the Committee's work on the subject, the Committee already knew that that would constitute one of the main themes of the Conference. The Committee should first examine the resolutions of the Commission on Human Rights, and should include the question of preparations for the World Conference on Human Rights on the agenda of its August session. By that time, it would have received information from the Under-Secretary-General for Human Rights. He agreed with the previous speaker that the Chairman of the Committee should participate in the work of the Conference's Preparatory Committee.

29. The CHAIRMAN said that, after having heard the Under-Secretary-General for Human Rights, the Committee would devote another meeting of its current session to the question of its contribution to the work of the World Conference on Human Rights.

30. Mr. WOLFRUM fully shared the views expressed by Mr. Ferrero Costa and Mr. Vidas: he was pleased that the Committee would be participating in the work of the World Conference on Human Rights, and would like the Chairman to represent it on the Preparatory Committee. He believed it was still too early to start considering specific subjects to be dealt with in the document prepared by the Committee. However, there was a need to know what the other committees had in mind, so as to avoid overlapping, and the subjects dealt with would have to be related to the prohibition of racial discrimination, which was central to the Committee's mandate. Those subjects would have to be defined more specifically at the end of the current session, or at the latest, during the Committee's summer session.

31. Mr. FERRERO COSTA agreed that at the current preliminary stage of its work the Committee should confine itself to general considerations. He drew attention to paragraph 14 of the report of the Seminar on the political, historical, economic, social and cultural factors contributing to racism, racial discrimination and apartheid (E/CN.4/1991/63), which, incidentally, was available only in English. In the paragraph in question, the Seminar had suggested that an initiative of great importance for the future work of the United Nations and for the World Conference on Human Rights would be the holding of an international seminar on the effectiveness of existing human rights monitoring mechanisms and recourse procedures, with special reference to the efforts to eliminate racism and racial discrimination. That was a very important theme. Had the Centre for Human Rights envisaged holding a seminar on the question, in which members of the Committee could participate? The work done by such a seminar could form part of the Committee's contribution to the work of the World Conference on Human Rights.

32. The CHAIRMAN said Mr. Ferrero Costa had rightly drawn attention to the importance of the Seminar on the political, historical, economic, social and cultural factors contributing to racism, racial discrimination and apartheid, held in December 1990 (E/CN.4/1991/63). The Seminar's conclusions on the need to monitor the effectiveness of recourse procedures, and on the usefulness of institutions such as the ombudsman, were crucial to the Committee's

activities. However, the recommendation to which he had drawn the Committee's attention (E/CN.4/1991/63, chap. III, para. 112 (14)) concerned the holding of an international seminar which would probably consider recourse procedures not only in the context of the International Convention on the Elimination of All Forms of Racial Discrimination, but also in that of other human rights instruments. On the other hand, the Committee might perhaps draw upon its own experience to take up questions such as the inadequacy of national legislation, and the limited extent to which it was being implemented. At the international level, the Committee could consider the quality of reports and the effectiveness of dialogue with States parties, and could recommend practical steps to be taken in that area. Certain members of the Committee could be called upon to draft a report on that question.

33. Mr. ABOUL-NASR asked Mr. Houshmand, representative of the Secretary-General, whether the Preparatory Committee would confine itself essentially to making the administrative and financial arrangements for the Conference, drafting the rules of procedure, preparing an agenda, and making a rough outline of the subjects the Conference was to deal with, or whether it would be making a detailed study of substantive issues. The answer to that question would determine how much time the Committee should spend in preparing its contribution to the Preparatory Committee.

34. Mr. HOUSHMAND (Representative of the Secretary-General) said that the Preparatory Committee, which would meet for the first time in September 1991, would consider all the administrative and organizational aspects referred to by the previous speaker, two of which were of particular interest to the Committee, namely the adoption of the agenda for the World Conference, and the documentation for that Conference. Accordingly, if the Committee wished to propose a study, or wished to have a specific item included on the Conference's agenda, it should notify the Preparatory Committee at its first meeting. That meeting would probably be followed by others, since the General Assembly was expected to authorize the Preparatory Committee to meet perhaps once or twice in 1992 and a third time in 1993.

35. He again drew attention to the fact that the third meeting of persons chairing the human rights treaty bodies, which had been held in October 1990, had recommended that the agenda of the World Conference on Human Rights should reflect the work of the treaty bodies and should, as far as possible, be prepared in consultation with those bodies. It had also recommended that a detailed evaluation of the work of each of the treaty bodies should be prepared by individual experts as part of the background documentation for the Conference (A/45/636, para. 67). In the light of that recommendation, it would be useful if the Committee, taking into account the schedule for preparations for the Conference referred to earlier, could first decide on its contribution to the work of the meeting of the Preparatory Committee in September 1991, and then on its contribution to the subsequent meetings of the Preparatory Committee as well as to the Conference itself.

36. Lastly, he drew attention to the annex to Commission on Human Rights resolution 1991/30, and notably to the recommendation contained in paragraph 4 thereof.

37. Mr. YUTZIS said that, while he was very cautious about the possible repercussions of events such as international conferences because of the underlying political interests involved, he believed that the Committee's contribution to the World Conference would require more than the mere drafting of a document or the inclusion of a particular item on the agenda. He proposed that the Chairman of the Committee, or the Bureau, should obtain from the Secretariat information on any initiatives taken in other bodies (subjects chosen, measures taken, and criteria used) up to the month of September. It was also important that at its next session, in August 1991, the Committee should designate one of its members to represent it at the meeting of the World Conference's Preparatory Committee. That representative would need to have a clear idea of what items the Committee would be recommending for inclusion in the Conference's agenda.

38. Mr. de GOUTTES explained that, when he had expressed interest in the question of the Committee's co-operation with national organizations dealing with human rights problems and with the struggle against racial discrimination, he had been referring to the recommendation contained in paragraph 9 of the annex to Commission on Human Rights resolution 1991/30, concerning the World Conference on Human Rights. That paragraph read: "The Preparatory Committee should examine ways and means by which the World Conference on Human Rights could encourage the establishment or strengthening of governmental and non-governmental institutions at the national level aiming at the promotion of human rights". In view of the preliminary nature of the discussion on that question, he reserved the right to return to it at the Committee's next session.

39. Mr. BANTON said that in his view the Committee on the Elimination of Racial Discrimination should take the lead over other human rights treaty bodies because it was the most senior and the most experienced in regard to implementation, and because the International Convention on the Elimination of All Forms of Racial Discrimination was the instrument which had received the most ratifications. Racial discrimination had been so comprehensively condemned that the Committee should set its own ambitious targets, and should not take its cue from other bodies where the planning of its activities was concerned.

The meeting rose at 6.10 p.m.

CERD/C/SR.900
14 March 1991

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Thirty-ninth session

SUMMARY RECORD OF THE 900th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 12 March 1991, at 10 a.m.

Chairman: Mr. SHAHI

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Submission of reports by States parties under article 9, paragraph 1, of the Convention (continued)

Action by the General Assembly at its forty-fifth session:

(a) Annual report submitted by the Committee on the Elimination of Racial Discrimination under article 9, paragraph 2, of the Convention (continued)

(b) Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights (General Assembly resolution 45/85) (continued)

The meeting was called to order at 10.25 a.m.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 9, PARAGRAPH 1, OF THE CONVENTION (agenda item 3) (continued)

1. The CHAIRMAN suggested that the Committee should take up certain matters that had been left pending, beginning with the question of overdue reports. The previous week, some members had volunteered to make personal contact with representatives of States parties whose reports were overdue, with a view to persuading them to take the necessary action. Mr. Wolfrum had offered to approach the representatives of Belgium, Cape Verde and Bulgaria: Mr. de Gouttes the representatives of Zaire and Côte d'Ivoire; Mrs. Sadiq Ali the representatives of Zambia, Botswana and Viet Nam; Mr. Vidas the representatives of Greece and Tunisia; and Mr. Ferrero Costa the representatives of Bolivia and Peru. In the meantime, the Committee had in fact received the ninth, tenth and eleventh periodic reports of Bulgaria, and so that country could be deleted from the list.

2. It had been suggested that he, as Chairman, could send a personal letter to representatives of the States parties concerned. It might, however, be preferable to prepare a letter which would authorize the Committee member concerned to make contact with the State representatives on the question of overdue reports.

3. Mr. ABOUL-NASR said he did not think there was a need for Committee members to be given any kind of authorization from the Chairman in order to make such an approach. In the past, the practice had been for the Secretariat automatically to send reminders to States parties in the event of delay; it would be better to keep to that practice.

4. The CHAIRMAN pointed out that following the recommendation of the chairpersons of human rights treaty bodies that "all appropriate means" be used to promote submission of overdue reports, it had been proposed that members of those bodies should use their good offices to make personal contact with representatives of the States concerned, so as to supplement the action normally taken, such as reminders from the Secretariat. That proposal had been discussed the previous week and accepted.

5. Some members had then indicated that if such contacts were to be successful, they would need to be provided with some kind of authorization from the Committee. One suggestion had been for an aide-mémoire and another for a personal letter, signed by the Chairman. In the end, a general letter of authorization had been thought to be the best solution, which the members concerned could use as they saw fit. However, it was up to the Committee to decide whether or not such a letter of authorization was necessary.

6. Mrs. SADIQ ALI said that, in her view, such a letter was essential since representatives were likely to ask in what capacity approaches were being made to them. A letter from the Chairman would lend such approaches greater authority.

7. Mr. ABOUL-NASR said that he was not in favour of such a procedure. He would prefer either the usual reminder from the Secretariat or a letter sent

direct from the Chairman to representatives on the Committee's behalf. Contact with permanent missions in Geneva needed to be maintained at the proper level of formality.

8. The CHAIRMAN suggested that the best solution would be for a letter of authorization to be provided for members who required it; those who could rely on their personal powers of persuasion could dispense with such a formality. The letter would be drafted in the light of the discussion and made available as needed before the end of the session.

It was so agreed.

ACTION BY THE GENERAL ASSEMBLY AT ITS FORTY-FIFTH SESSION (agenda item 2) (continued)*:

(a) ANNUAL REPORT SUBMITTED BY THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION UNDER ARTICLE 9, PARAGRAPH 2, OF THE CONVENTION (continued)*

(b) EFFECTIVE IMPLEMENTATION OF INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS, INCLUDING REPORTING OBLIGATIONS UNDER INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS (GENERAL ASSEMBLY RESOLUTION 45/85) (continued)*

9. The CHAIRMAN reminded the Committee that Mr. Sherifis had raised the question of permanent arrangements for financing the Committee's sessions and had indicated that he was not in agreement with the proposal to set up a contingency reserve fund as a temporary measure. He invited the representative of the Secretary-General to describe to the Committee the current situation with regard to financing.

10. Mr. HOUSHMAND (Representative of the Secretary-General) said that the decision of the General Assembly on that subject had already been made available to members of the Committee. The Commission on Human Rights had also dealt with the subject in its recent resolution 1991/20, entitled "Effective functioning of bodies established pursuant to United Nations human rights instruments". Thus, in paragraph 8 of that resolution, the Commission urged States parties to meet their financial obligations without delay and in paragraph 9 invited meetings of States parties to consider ways and means of strengthening the collection of contributions. Paragraph 10 noted that the General Assembly had welcomed the suggestion that it might consider alleviating the financial difficulties of treaty bodies by the temporary allocation of necessary funds out of the United Nations regular budget. Paragraph 11 emphasized the duty of all parties to human rights instruments to meet their financial obligations pursuant to such instruments, and paragraph 12 endorsed the recommendation by the Meeting of chairpersons of human rights treaty bodies that the General Assembly should, as a matter of priority, ensure such financing from the United Nations regular budget. Paragraph 13 requested the General Assembly to mandate the Secretary-General

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* Resumed from the 898th meeting.

to take the appropriate steps to finance meetings of such treaty bodies from available resources in the regular budget, with the proviso that reimbursement would eventually be made from the contributions of States parties to the convention concerned or from other appropriate sources. Finally, the resolution requested the Secretary-General to present a report to the next session of the General Assembly on financial, legal and other implications of providing full funding for the operation of all treaty bodies.

11. The previous year, the Commission had recommended setting up a contingency reserve fund, which could be used to supplement the resources available to the Committee. States parties which had accepted that recommendation would be asked to make a voluntary contribution to the fund. The matter would be discussed at the meeting of States parties scheduled for January 1992. He hoped that the setting-up of the reserve fund would offer at least a temporary solution to the problem of financing, which would help the Committee to regularize its meeting schedule.

12. Mr. VIDAS suggested that the Committee should express its satisfaction at the improvement in the situation as far as financing its regular activities was concerned; in fact, the current session was the first March session for two years. It should express the hope that steps could eventually be taken to regularize the situation completely, so that alternate sessions could be held in New York, as they had been in the past.

13. The CHAIRMAN said that Mr. Sherifis had also drawn attention to paragraph 54 of the report of the Meeting of chairpersons (A/45/636), which suggested that consideration should be given to amending the relevant provisions of the Convention to provide funding for the Committee from the regular budget of the United Nations. He invited views on that suggestion.

14. Mr. ABOUL-NASR said the most that could be done at the present stage was for the Committee to recommend in its report to the General Assembly that States parties consider that suggestion at their meeting in 1992. The amendment of conventions was a lengthy process, and he did not think that a solution to the problem could be found by that means in the lifetime of most Committee members.

15. Mr. WOLFRUM endorsed that view. He feared that setting in motion the amendment procedure would be like opening Pandora's box, in that it would encourage other proposals for amendments. He would strongly oppose any such procedure.

16. The CHAIRMAN suggested that the Committee should take note of the information provided, and should express its satisfaction at the improvements in the Committee's financial situation, as suggested by Mr. Vidas.

It was so agreed.

17. The CHAIRMAN asked whether members had reached agreement among themselves as to who was to be responsible for monitoring developments in each of the other human rights treaty bodies.

18. Mr. ABOUL-NASR requested further details on the proposed joint meeting with the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

19. The CHAIRMAN drew attention to paragraph 326 of the Committee's report to the General Assembly on its thirty-eighth session (A/45/18), concerning the arrangements for the one-day joint meeting with members of the Sub-Commission. Two items for discussion had already been identified: the conflict between the right to protection from racial discrimination and certain other fundamental rights and freedoms, and the question of racial discrimination in relation to the distinction between citizens and non-citizens. The Chairman of the Sub-Commission had approved those two items, but they were not exhaustive. Did the Committee wish to discuss the matter now?

20. Mr. VIDAS said that, in order to determine what topics should be discussed at the joint meeting, it would be helpful to have some information on the new procedures established by the Third Committee of the General Assembly for its consideration of the reports of human rights treaty bodies.

21. Mr. FERRERO COSTA suggested that the Committee should consider the arrangements for the joint meeting with the Sub-Commission at the present meeting, with a suspension to allow the various volunteers to decide who would be responsible for liaising with a particular committee. Since the discussions at the joint meeting were to be based on written contributions prepared in advance, volunteers would also be needed to prepare the topics proposed by the Committee. In any case, it would be necessary to know what aspects of racial discrimination the Sub-Commission had been considering over the past two years. The agenda seemed rather short for a one-day meeting. The Committee might therefore wish to select further topics, one of which might be an evaluation of the worldwide situation with regard to racial discrimination.

22. Mrs. SADIQ ALI suggested that a further topic that could be taken up was the protection of indigenous populations, especially since the Sub-Commission had a Working Group on that subject.

23. The CHAIRMAN agreed that more information was required on the Sub-Commission's action on racial discrimination over the past two years. It would be helpful if its two most recent reports could be made available. Mr. Ferrero Costa's suggestion that a third item - an evaluation of the worldwide situation with regard to racial discrimination - should be included seemed to be appropriate, as was Mrs. Sadiq Ali's suggestion regarding the protection of indigenous populations. As Mr. Ferrero Costa had pointed out, volunteers would be needed to prepare the written contributions in advance. Were there any?

24. Mr. WOLFRUM suggested that members should be given a little time in which to reflect on the matter. The Committee would also have to decide what it wished to discuss with the Under-Secretary-General for Human Rights on the following day.

25. Mr. SHERIFIS supported Mr. Wolfrum's suggestion. There would be no need to close the meeting; a short suspension would suffice.

26. The CHAIRMAN agreed that the meeting should be suspended in order to allow the volunteers to apportion the various tasks among themselves.

The meeting was suspended at 11.15 a.m. and resumed at 11.50 a.m.

27. The CHAIRMAN drew attention to a number of documents that had been circulated during the suspension. They included the reports of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its forty-first and forty-second sessions, and copies of the letters exchanged between him as Chairman of the Committee on the Elimination of Racial Discrimination and Mr. Eide, the Sub-Commission's Special Rapporteur on the Second Decade to Combat Racism and Racial Discrimination. He read out the letters concerned. The letter from Mr. Eide indicated that members of the Sub-Commission had suggested that the topics for consideration at the joint meeting should include: ways and means of co-ordinating action on common activities; emerging problems and trends involving racism; mutual assistance for further enhancing action in combating racism and racial discrimination; and questions of overlapping and duplication, for example by asking Governments to report on similar questions dealt with by the Committee on the Elimination of Racial Discrimination.

28. He invited Mr. Wolfrum to inform the Committee which members would be responsible for maintaining contact with the other United Nations human rights bodies.

29. Mr. WOLFRUM announced that Mrs. Sadiq Ali would be responsible for liaison with the Group of Three established under the International Convention on the Suppression of the Crime of Apartheid, Mr. Ferrero Costa with the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Mr. Yutzis with the Commission on Human Rights, he himself with the Human Rights Committee, and Mr. Rhenan Segura with the Committee on Economic, Social and Cultural Rights. Arrangements had not yet been made for the Committee against Torture or the Committee on the Elimination of Discrimination against Women. The Committee on the Rights of the Child had not yet begun its work.

30. Mr. BANTON volunteered to be responsible for liaison with the Committee on the Elimination of Discrimination against Women.

31. Mrs. SADIQ ALI expressed the view that the Committee on the Elimination of Racial Discrimination was not authorized to discuss the status of women, since that was not mentioned in the International Convention on the Elimination of All Forms of Racial Discrimination.

32. Mr. VIDAS volunteered to maintain contact with the Committee against Torture.

33. Mr. LECHUGA HEVIA volunteered to be responsible for liaison with the Committee on the Rights of the Child.

34. The CHAIRMAN thanked the members concerned for their willingness to take on additional responsibilities.

35. Mrs. SADIQ ALI inquired what arrangements had been made with regard to genocide.

36. The CHAIRMAN replied that there was no committee on genocide. The matter was dealt with by the Commission on Human Rights and by the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

37. Some members of the Committee had volunteered to prepare papers on the two problems mentioned in paragraph 326 of the Committee's report on its forty-fifth session (A/45/18) and on a third topic. Mr. Wolfrum had volunteered to produce the advance paper on the conflict between the right to protection from racial discrimination and certain other fundamental rights and freedoms, and a member not present at the current meeting had shown interest in the topic of racial discrimination in relation to the distinction between citizens and non-citizens. Mr. Yutzis had volunteered to prepare a paper on the worldwide situation with regard to racial discrimination. Mrs. Sadiq Ali had suggested a fourth topic on which a paper might be prepared, namely, the protection of indigenous populations. That question might be left open for the moment.

38. Mr. SHERIFIS suggested, as a sub-item within the ambit of the paper to be prepared by Mr. Yutzis, the problem of racial discrimination as a result of armed conflict. Recent events would seem to justify devoting some time to that particular aspect of the world situation.

39. Mr. YUTZIS and the CHAIRMAN welcomed the proposal by Mr. Sherifis.

40. Mr. FERRERO COSTA said that, in his letter to the Chairman of the Committee, Mr. Eide, Special Rapporteur on the Second Decade to Combat Racism and Racial Discrimination, had suggested four points for discussion during the one-day joint meeting; three of those points raised the question of coordination between the Committee and the Sub-Commission and might be combined into a fourth item on which a preliminary paper could be prepared. The relevant points were: ways and means of co-ordinating action on common activities; mutual assistance for further enhancing action in combating racism and racial discrimination; and questions of overlapping and duplication. He would be happy to volunteer to prepare a paper on co-ordination.

41. Mr. BANTON said that the question of indigenous populations might also be considered, but it would be better if it was suggested by the Sub-Commission, which had done more work on it than the Committee. That question could therefore move down the list of priorities, while the Committee could concentrate on the suggestion made by Mr. Ferrero Costa. If his offer to prepare a paper was accepted, that would indicate to the Sub-Commission an area in which the Committee felt it could make a positive contribution.

42. One of the important achievements of the Convention was that it had led to the establishment of an international vocabulary on the issues of racism and racial discrimination. In the 1950s, there had been no commonly accepted concepts. The Convention had, however, taken the initiative in establishing

a vocabulary and in 1971, for example, "racism" had been added to the term "racial discrimination". It should, however, be remembered that people had different ideas about what was meant by racism, and it was important that people should be aware of the different interpretations placed by different groups in different countries on the concepts of racism and racial discrimination.

43. Mr. SONG Shuhua suggested that the Committee might consider adding a sub-item on the relationship between racism and the economy to the paper to be prepared by Mr. Yutzis.

44. Mrs. SADIQ ALI considered that Mr. Song Shuhua's suggestion was also relevant to the question of the protection of indigenous populations. The Sub-Commission had prepared a study on that question and she would like to know how much progress it had made so that the Committee could benefit in its own study on the question.

45. Mr. VIDAS said that all the questions which had been mentioned as possible topics for discussion were of interest to the Committee. A one-day meeting did not, however, provide a great deal of time and it was therefore important that the meeting should be approached with caution, for otherwise it would develop into a kind of seminar at which everything that had ever been said on the subject would simply be repeated. It had been agreed that the purpose of the joint meeting would be to exchange views on the prevention of racial discrimination. Authors of papers should bear that point very much in mind and make every effort to ensure that the meeting was confined to that purpose; the meeting must not become too general in character.

46. The CHAIRMAN agreed that careful preparation was needed. Members drafting papers should perhaps have 10 minutes in which to present them but that point would have to be agreed with the Sub-Commission.

47. Mr. RHENAN SEGURA volunteered to work with Mr. de Gouttes on the paper concerning the question of racial discrimination in relation to the distinction between citizens and non-citizens.

The meeting rose at 12.30 p.m.

CERD/C/SR.901
19 March 1991

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Thirty-ninth session

SUMMARY RECORD OF THE 901st MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 13 March 1991, at 10 a.m.

Chairman: Mr. SHAHI

later: Mr. FERRERO COSTA

CONTENTS

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

Tenth periodic report of Sweden

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)*

Tenth periodic report of Sweden (CERD/C/209/Add.1)

At the invitation of the Chairman, Mr. Corell, Ms. Orlov-Baumann and Mr. Dahl (Sweden) took seats at the Committee table.

1. Mr. CORELL (Sweden), introducing the report, stressed his Government's intention of complying with its obligations under the Convention in full. It was probably fair to say that the overall assessment made by the Committee after it had considered Sweden's eighth and ninth periodic reports had demonstrated that his country's efforts to implement the Convention had been both ambitious and successful. Some members of the Committee, however, had expressed views implying that Swedish legislation did not fully meet the requirements of the Convention. Naturally, if any doubts on that score still existed, his Government would do its utmost to dispel them.

2. In 1987, the Swedish Government had decided to set up a Commission against Racism and Xenophobia with the task of examining what further measures should be taken to combat racism and xenophobia and to promote such measures. The mandate of the Commission had been described in Sweden's eighth periodic report, and some of the legislative measures proposed by it had been mentioned in the introductory statement which he had made when presenting that report in the Committee. The Commission had submitted its final report to the Government in March 1989. The Government had examined the report and, in May 1990, had decided to appoint a special expert to consider three specific questions and present his conclusions to the Government by the end of 1992 at the latest. The three questions, which were all related to issues that had been raised during the Committee's consideration of Sweden's eighth and ninth periodic reports, were the following.

3. First, the expert was instructed to consider, as a matter of priority, possible legislation aimed at strengthening protection against racist organizations. The legislation would not involve a direct ban on the existence of those organizations as such but would be directed at the behaviour of individuals. The expert was also to consider the possibility of outlawing the organization of, participation in, and support for, racist activities. A formal ban on racist organizations should be considered only if other alternatives were judged to be inadequate. The expert intended to present his conclusions on that question in September 1991.

4. Second, the expert was requested to examine the possibility of introducing legislation against ethnic discrimination in the labour market, to consider the need for a specific Act against such discrimination and to submit a proposal to that end.

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* Resumed from the 897th meeting.

5. Third, the expert was requested to review the Act against Ethnic Discrimination, which had been described in Sweden's eighth periodic report, as had the terms of reference of the Ombudsman against Ethnic Discrimination appointed pursuant to the Act. The review of the Act should be seen in the light of views expressed by the Ombudsman to the Government in November 1989 and of the Government's evaluation of the first three years of his activities. According to the Ombudsman, the Act against Ethnic Discrimination should not refer specifically to the labour market as it did at present, but should deal with life in society in a broad sense. When drawing up the expert's terms of reference, the Government had noted that the Ombudsman had, in fact, been concerned with life in society at large, and that should be reflected in the Act governing his activities.

6. There had been further important developments since the Committee's consideration of Sweden's eighth and ninth periodic reports. The issue of the expression of racist opinions in programmes on local radio had been touched upon during the presentation of those reports. A group of officials from the Ministry of Justice had for some time been examining the question of expanding the constitutional protection of the freedom of speech. The Commission against Racism and Xenophobia had proposed that the group should be asked also to consider questions concerning violations of restrictions on the freedom of expression in local radio broadcasts. It had further been proposed that the group should examine solutions that would permit a more rapid review of the right of transmission in cases of such violations. In a Bill submitted to Parliament in February 1990, the Government had indicated that it shared the views expressed by the Commission. In a recent court case, the responsible programme producer had been convicted of agitation against an ethnic group. As a result of the verdict, the broadcasting permit had been suspended for 12 months. The judgement had been upheld in a court of appeal, and the case was now pending before the Supreme Court.

7. In the Bill of February 1990, the Government further took the view that organizations and other persons that were prepared to help in shaping public opinion with a view to promoting good ethnic relations should be given greater possibilities of obtaining public funds for specific projects. An ordinance to that effect had been issued in June 1990, under which the Swedish Immigration Board had been given greater possibilities of granting public support for specific immigrant projects designed to further good ethnic relations and to strengthen immigrant organizations. In line with a proposal made in the same Bill, special funds were to be allocated to promoting good ethnic relations in schools and in teacher-training programmes. Parliament had also decided that research on such matters as ethnic relations and discrimination on ethnic grounds should be encouraged and intensified.

8. Reliable statistics on the frequency of racist offences and offences originating in ethnic antagonism in general were of considerable value for a correct assessment of the problem of ethnic discrimination and for the preparation of countermeasures to be taken by society. For that purpose, the offences of unlawful discrimination and agitation against an ethnic group had been listed separately in the official crime register since 1 January 1991. Furthermore, in the Bill of February 1990, the Government

had stated that consideration should be given to the possibility of indicating in the register the extent to which offences in general had their origin in racism or xenophobia.

9. A government committee set up in 1982 to examine the possibilities of strengthening the position of the Sami population had recently concluded its work. The questions examined included the legal position of the Samis in matters relating to the reindeer-breeding industry, the need for a popularly elected body to represent the Sami population in various contexts, and the position of the Sami language. That Committee's report and the specific proposals made by it were currently being considered by the Government.

10. The Committee on the Elimination of Racial Discrimination (CERD) could rest assured that its overall positive assessment of Sweden's eighth and ninth periodic reports had in no way weakened his Government's ambitions to intensify its campaign against ethnic discrimination of any kind. He was confident that Sweden's tenth periodic report would convince the Committee that those ambitions were still high.

11. Mr. WOLFRUM, country rapporteur, noted that Sweden's tenth periodic report had been drafted in accordance with the Committee's guidelines, was very comprehensive and contained valuable information. It also provided evidence that the elimination of racial discrimination played an important role in Swedish foreign and domestic policy.

12. Paragraph 1 of the report indicated that the population of Sweden had been very homogeneous until the First World War. That statement, however, failed to take account of the Sami and Finnish minorities, which had always represented a significant part of the population. As in the two previous reports, the report before the Committee focused mainly on the treatment of immigrants or on general measures taken for their protection, whereas less attention was paid to the Samis. The figures given indicated that the traditional pattern of immigration into Sweden had changed. Whereas in former times immigrants had come largely from other Nordic countries, since the early 1980s the number of applications for political asylum had increased dramatically. It could be assumed that the new form of immigration, which confronted the Swedish population with cultures and religions different from its own, might result in tension. For example, more than 100 languages were spoken in Stockholm and in some schools foreigners were in a majority.

13. Paragraph 4 of the report indicated that the basic approach of the Swedish Government in its efforts to eliminate racial discrimination was to tackle the problem as part of the country's general immigration policy. However, that policy had recently become more restrictive. Only citizens of Nordic countries could settle in Sweden without prior permission. Everybody else needed, in advance, a visa and a work permit. In 1989, apparently only 160 citizens of non-Nordic countries had been granted permission to immigrate into Sweden. The preferential treatment accorded to citizens of Nordic countries had already been questioned in the Committee, and he reiterated the comments made in that respect on previous occasions. He wondered whether a statement made in a report by the European Parliament to the effect that immigration had been restricted as a result of growing racist tendencies was correct.

14. Sweden accepted 1,250 refugees per annum after consultations with the High Commissioner for Refugees. Apart from that, other individuals might apply for asylum. It would be of interest to know how many refugees had been granted asylum in 1989 and 1990.

15. In paragraph 6 of the report, mention was made of the Act against Ethnic Discrimination. It was his impression that the Act added little to existing legislation. It did not fully extend the prohibition of racial discrimination into the employment field in that it did not provide effective protection against racial discrimination in recruitment, special training or promotion. He would therefore like to know whether there were any effective measures against discrimination in recruitment.

16. Chapter 1, section 9, and chapter 2, section 15, of the Constitution contained the most important provisions as far as the implementation of the Convention was concerned, requiring respect for the equality of everyone before the law and prohibiting discrimination against a citizen on the grounds of his belonging to a minority or on account of his race, colour or ethnic origin. He would like to know how chapter 2, section 15, of the Constitution was enforced and what remedies there were to secure protection against a statute or regulation which led, directly or indirectly, to discriminatory treatment. Paragraph 16 of the report was rather vague in that respect and did not mention any legal remedies to nullify a statute or regulation which did not conform to the Constitution.

17. By means of chapter 16, section 8, of the Penal Code and the Freedom of the Press Act, Sweden had undertaken to prohibit the dissemination of statements or communications threatening or expressing contempt for an ethnic or other group by making allusion to race, colour, national origin or religious creed. Furthermore, chapter 16, section 9, of the Penal Code made ethnic discrimination in business a punishable offence. Those provisions covered article 2 (d) and article 4 (a) of the Convention, but there seemed to be no fully equivalent prosecution of organizations. The information provided in that respect in paragraphs 76 et seq. of the report, apart from prohibiting extreme cases, indicated that Swedish policy was aimed at silencing racist associations rather than prohibiting them. Freedom of association was apparently held in higher esteem in Sweden than freedom of opinion or expression or freedom of the press. The Swedish representative might wish to inform the Committee whether that was correct. Some information would also be appreciated on the background of the Sweden Democrats and similar organizations.

18. As far as the dissemination of racist ideas was concerned, the report mentioned only one case involving the mass media, in paragraph 33. He would like to know whether that case had finally been decided by the Supreme Court and what, in the view of the Swedish Government, the relationship was between freedom of expression as referred to in article 5 (d) (viii) of the Convention and the prohibition of racial discrimination. Why had the literature distributed by Dietlieb Felderer, which included neo-Nazi and anti-Semitic tracts, not been prohibited, as well as a journal called Revisionist History? Paragraph 37 of the report contained a reference to hostility between different ethnic groups. Could the representative of Sweden inform the

Committee how often the respective provisions of the Penal Code had been used in that connection and give some information on the relevant cases?

19. Paragraphs 37-40 of the report showed that the Swedish Government had made considerable efforts to integrate immigrants into Swedish life while, at the same time, preserving their cultural identity. Such a policy was exemplary, particularly as far as efforts in the school sector were concerned, and they fully implemented article 2, paragraphs 1 (e) and 2, of the Convention. It was therefore extremely puzzling to note that Sweden had recently made a severe cut in the budget for educating children in their mother tongues. Did that represent a change of policy towards immigrants, and had the cuts been negotiated with immigrant groups? It would also be interesting to know how many immigrants completed primary, secondary and university studies, and who was responsible for operating immigrant broadcasting services. There seemed to be a licensing system, but was every minority association eligible for a licence?

20. In the section on the implementation of article 2, paragraph 2, of the Convention, the report mentioned the efforts made in respect of the Sami population. It was quite astonishing to learn that attempts to strengthen the legal position of the Samis had been initiated only in 1990. First of all, it would be helpful if the Committee could be given some information on the report of the government committee on the Samis mentioned in paragraph 43. Were the three points referred to in paragraphs 43-45 - namely, the use of the Sami language in contacts with "certain public authorities", the inclusion of a reference to the Samis in the Constitution, and the establishment of a representative elected body - the only considerations?

21. He would be particularly interested in knowing the position of the Samis vis-à-vis the land used for reindeer husbandry. Was it State property, the private or collective property of the Samis, or property privately owned by somebody else? Was it true that problems had arisen when Samis had tried to cross State-owned land? He would also like to know the relevance in that respect of the codicil which formed part of the 1751 border treaty between Denmark/Norway and Sweden, according to which special status should be granted to a Lapp who paid taxes for his plot of land.

22. Paragraphs 46 and 47 were not quite clear. Further information was needed on the Natural Resources Act and its relevance to the Samis. The reference to pasture rights presupposed that the area was owned by non-Samis. Why had the traditional rights of Samis not been taken into account when the land had been purchased by somebody else?

23. He would also like to know what had happened to the Sami Court established by the 1751 codicil and to the former Sami Ombudsman? What was the status of the Sami language in the courts and before the public authorities? Immigrants were provided with an interpreter, but did Samis benefit from the same arrangement?

24. In paragraph 108 the report referred to the Sami School Ordinance, according to which Sami children had the right to attend Sami schools instead of ordinary schools. What were the specific features of those schools, and what was their standard compared with that of ordinary schools? How many

Sami children who had studied at Sami schools went on to higher education, including university? Was there not a danger that special schools for Samis might lead to segregation?

25. It would also be interesting to know the present social situation of the Samis as compared with that of the rest of the population, especially in terms of average income and the average unemployment rate, as well as whether Samis were employed in the higher levels of the civil service.

26. The report made several references to reindeer-herding, which was governed by the Reindeer Husbandry Act. In several instances it was pointed out that reindeer-herding was essential for upholding Sami culture. What was not mentioned was that of the 15,000 to 20,000 Samis, only 2,500 might engage in reindeer-herding. In that connection, he wished to draw the attention of the Committee to the case decided by the Human Rights Committee in 1988 (CCPR/C/33/D/197/1985) in which the Reindeer Husbandry Act had been criticized, since it resulted in providing for two different groups of Samis, a privileged group engaged in reindeer husbandry and a non-privileged group unable to participate in reindeer husbandry and excluded from the activities of the Sami communities. Under article 1, paragraph 1, of the Convention, "racial discrimination" included any distinction or exclusion which had a discriminatory effect. He would therefore like to know how the effects of the Reindeer Husbandry Act could be justified.

27. It was equally questionable whether the provisions whereby Sami villages themselves decided upon the membership of the village and an appeal could be granted only if there were special reasons for allowing such membership were in conformity with the Convention. Since membership of Sami villages seemed to be the only way of participating in Sami cultural activities, the Swedish Government should reflect on whether such a "closed shop" system was really justifiable. CERD had generally taken the view that membership of a given ethnic group should, in general, be based upon self-identification only.

28. The Swedish representative might wish to expand upon the reference to a Sami "representative elected body" contained in paragraph 45 of the report and to inform the Committee whether the Swedish Government endorsed transboundary cooperation among Samis living in Sweden, Norway, Finland and even the Soviet Union.

29. In paragraphs 50-74, the report provided detailed information concerning the attitude of Sweden towards South Africa and the policy pursued in that regard. The results of trade policy were explained in paragraph 64. In brief, Sweden had implemented article 3 of the Convention to the widest extent possible.

30. Some comments required to be made about the Ombudsman against Ethnic Discrimination, established by the Act to Counteract Ethnic Discrimination. It would be desirable for the Committee to have an English translation of the report of the Ombudsman which had been submitted in November 1989. The status of the Ombudsman against Ethnic Discrimination seemed, however, to be inferior to the status of the Ombudsmen for consumer affairs, for economic competition and for sex discrimination. Unlike the other three Ombudsmen, he was not authorized to bring those accused of infringements to court nor could he

require information to be given to him under oath. Those deficiencies in the powers and functions of the Ombudsman were relevant to the issue of labour relations.

31. In general, Swedish legislation offered protection against wrongful dismissals; no such protection existed, however, against discrimination which might stem from unfair treatment at the time of recruitment. Nor did the Ombudsman provide protection in such cases. That situation was not in full conformity with the commitments made under article 5 (e) (i). The information given in paragraph 103 was insufficient. The same view had been taken by the Special Commission against Racism and Xenophobia in 1987. Further information should be given in the next report on the situation of immigrants with regard to employment, unemployment, wages and skills.

32. He had some questions on the referendum held in Sjöbo in which 67.5 per cent had voted in favour of ending the acceptance of further refugees. He would like to know whether the referendum represented an exceptional case or whether there had been other similar incidents which would indicate a growing negative climate vis-à-vis refugees in Sweden. He requested the representative of Sweden to inform the Committee about the violent racial incidents in Eskilstuna, Lesjöfors, Överum and Jönköping in 1989. A refugee in Jämtland had nearly been killed after a bomb under his car had exploded. An Eritrean family in Småland had been attacked in the middle of the night when a Ku Klux Klan-type gang of Swedish youths had burned a cross on their front door. He would like to know whether the perpetrators of those incidents had been prosecuted.

33. In spite of the many questions he had asked, he would nevertheless like to congratulate the representative of Sweden on the very comprehensive and informative report and introduction and on the high standard achieved in Sweden in protecting and fostering ethnic minorities.

34. Mr. LECHUGA HEVIA observed that changes in the ethnic composition of the population had led to changes in the social atmosphere and that the Government had been concerned to solve the problem resulting from that change. Success in that respect had not, however, been achieved. In that connection, he would like to know the position on the Bill which the Government had submitted to Parliament in February 1990 on the basis of the report presented by the Special Commission against Racism and Xenophobia. He would also like to know whether the case mentioned in paragraph 33 of the report was the only instance of a conviction for the offence of agitation against an ethnic group. Were there any instances of agitation against groups other than Jews?

35. He would also welcome information on how the health, mortality, employment and educational levels of the Sami population compared with those of the Swedish population as a whole.

36. Mr. SONG Shuhua welcomed the report, which was of excellent quality and consistent with the guidelines. It reflected a frank attitude on the part of the Government of Sweden. Compared with the eighth and ninth reports, the current report had less information on the Samis but more on the question of immigrants. The ethnic composition of the population had changed substantially since 1914 and approximately 8 per cent of the population was

made up of persons who had been born abroad. In general, the Swedish attitude towards foreigners was friendly. He would welcome information on developments in connection with the review of the Act to Counteract Ethnic Discrimination mentioned in paragraph 36.

37. He was encouraged by paragraph 45 regarding the proposal for a special law containing provisions to further Sami culture and society, primarily through the establishment of a representative elected body. He would like to know whether there were forms of employment other than reindeer-herding which were available to the Sami population. To what extent were the Samis represented in the Swedish Parliament?

38. He was not sure that he had grasped the meaning of paragraph 85 regarding protection against any "enforced encroachment on (the) body". Paragraph 87 referred to the use of force by the police in certain carefully defined circumstances. He wondered whether such use of force was acceptable in a democratic society.

39. He would also welcome information on the growth of other sectors of the immigrant society, such as the Turks and Spaniards, and particularly the comparative growth rates of such groups compared with the Swedish population as a whole.

40. Mr. VIDAS welcomed the report, which continued the constructive dialogue between the Committee and the Government of Sweden. The establishment by the Government in May 1990 of a Commission to Study Measures against Ethnic Discrimination, referred to in paragraph 8, represented a major positive development. He hoped that the report which the Commission was to submit in 1992 would prove helpful to other Governments in a similar situation. In its report to the General Assembly, the Committee should single out that development as an important step which might well be of interest to other countries.

41. The Committee had not yet received a reply from the Swedish Government to its inquiry whether incidents of children being removed from unfit mothers occurred more frequently among ethnic minority children. He would welcome a reply in the next report.

42. Mr. BANTON said that the Committee welcomed the success of its continuing dialogue with Sweden. There had been criticisms in the past and it was very reassuring to hear from the representative of Sweden how he had recognized the continuity of those criticisms. He hoped that the representative of Sweden had noted that Mr. Wolfrum, who had not been a member of the Committee when the previous reports of Sweden had been considered, had independently reinforced the points which had been made on previous occasions.

43. One point to which the Committee had drawn attention was the relevance of residential segregation for inter-group relations, and it had expressed regret at the lack of information concerning the relative educational attainments of ethnic minority schoolchildren. Paragraph 16 might have exaggerated popular knowledge about the provisions of the Swedish Constitution. In their study of black/white relations in the United States of America, Gunnar Myrdal and his wife had been astonished when they had visited the United States to see how

the Constitution was a living reality in the minds of the people, to an extent they had not been prepared for. Things had changed in the past 50 years but the ordinary public in Sweden were really not as well acquainted with their constitution as was the case in the United States.

44. With reference to paragraph 36, it would seem that the Special Commission against Racism and Xenophobia had not been advised to consult with immigrant associations who, after all, represented the victims of discrimination.

45. The guidelines contained in the brochure referred to in paragraph 39 were admirable but perhaps the time had come to ask how well they were observed in practice. That might well be a topic for research. It was not, however, sufficient to remove formal barriers and the question arose as to what formal barriers Parliament had in mind and whether they had been removed.

46. Paragraphs 44 and 45 possibly constituted the most important feature of the report and the potential of the developments referred to was huge. With reference to what was said in paragraph 40 regarding the framework of fundamental norms which applied in Sweden, the Swedish Government could, of course, declare what those norms were and insist that new immigrants observe them.

47. He was surprised at the lack of information on the Ivan Kitok case, since the Committee's guidelines asked for details of judicial decisions and the Kitok action must have started several years before the Human Rights Committee had become aware of it in 1985. He could sympathize with the philosophy behind the 1971 Reindeer Husbandry Act, which sought to integrate the Samis, like other people, into Swedish society on the basis of their occupations and what was necessary to pursue a livelihood. The criticisms by the Human Rights Committee of certain features of that Act and its application to Ivan Kitok were fully justified. It would be interesting to learn whether Ivan Kitok had been granted membership of the Sörkaitum Sameby.

48. Paragraph 80 related to article 4 (b), which was mandatory and not subject to any "due regard" clauses. In that connection, he hoped that members of the Swedish delegation, if they did not already have it, would obtain a copy of the special study of article 4 prepared by the Committee. It contained the full reasoning adopted by CERD in that respect and would be of value to anyone in Sweden considering further action.

49. Paragraph 107 must be of interest to the Committee, as it dealt with the learning of the mother tongue. Like Mr. Wolfrum, he would like to know if there had been any change of policy. A feature of Swedish political life had been the continuing stress on consultation before action, but the budgetary reductions had come as a bombshell and had been made without any consultation. Was there a policy decision behind that action? The changes had caused much concern in Sweden and did not appear to have been handled in the usual manner.

50. During the Committee's consideration of the ninth report, he had referred to the crime statistics produced by the Commission against Racism and Xenophobia. Those statistics were now to include separate statistics on offences against minority groups. He would like to know whether criminal proceedings under the current law had been effective in reducing the incidence

of such offences and whether new legislation would make any difference. There seemed to be many such incidents, many of which involved bombing and incendiarism, as had been the case in Kimstad, Sjöbo, Kungälv, Mariestad, Bocksjön, Laholm and Västeras. Those episodes illustrated the magnitude of the problems faced not only by the Swedish Government but by the European Parliament, particularly as the phenomenon was expanding in many European countries and would pose problems when the Committee came to discuss the reports of the European countries.

51. Mr. RESHETOV welcomed the high quality of the report and the willingness of the Government of Sweden to pursue dialogue and to try to answer the Committee's questions.

52. He wished to make five points. The first related to paragraph 33, from which he had noted that there had been a recent judicial decision on the Radio Islam case which had illustrated how use had been made of the judicial mechanism to cope with racial discrimination. Similar problems had arisen in the Soviet Union involving, in particular, incidents of anti-Semitism. He would be interested to know whether other similar groups existed in Sweden. Such groups were becoming more organized and better financed, which facilitated dissemination of their views. Their actions involved racial discrimination against other national groups.

53. With reference to immigration policy, Governments and society as a whole bore a great responsibility in ensuring, as far as possible, that immigrants were welcomed and given the necessary civil status. Paragraph 38 of the report referred to the provision of official support for immigrants; he asked for more specific information on the subject in view of the growing problems concerning the situation of immigrants in various parts of the world, especially the highly developed European countries. In dealing with immigration policy, Governments should adopt a humanitarian and not purely legalistic approach.

54. Like other members, he appreciated the information provided about measures taken to enable the Sami population to preserve its national identity and language, but he still had the impression that the Swedish authorities were adopting a somewhat paternalistic approach, rather than aiming at the assimilation of the Samis, with due respect for their specific features and the preservation of their identity.

55. With regard to measures against organizations promoting and inciting racial discrimination, he referred to paragraphs 76-80 of the report and said that national legislation must be enacted against organizations which, through acts or publications, were clearly racist in outlook in order to ensure that they ceased to operate. Any failure to do so would represent a breach of article 4 (b) of the Convention.

56. Sweden's democratic tradition evidenced, for instance, by the right of foreigners to take part in municipal elections, was well known. However, when

the Swedish authorities expressed opinions about situations or events outside Sweden, they should consistently ensure that they were abiding by the same principles concerning universal respect for human rights within their own borders.

57. Mr. YUTZIS requested clarification of the term "unlawful discrimination" in paragraph 20 of the report, since his understanding was that discrimination, as opposed to certain forms of distinction, was always unlawful.

58. In connection with the part of the report dealing with article 2, paragraph 1 (a)-(d), of the Convention, he questioned the logic of paragraphs 32 and 33, since the emphasis seemed to be on extending constitutional protection for freedom of speech in participatory local radio broadcasting, whereas the case mentioned related to restrictions on the expression of racist opinions on such programmes.

59. On the subject of freedom of conscience and religion and with reference to paragraphs 101 and 102 of the report, he wished to know who decided that students at the various levels of compulsory schooling could be exempted from official religious instruction, and what were the criteria for such exemptions. In the same connection, he would be interested to know whether the question of providing alternative religious instruction had arisen because there was some questioning of the official teaching of religion or whether it was a measure specifically aimed at the ethnic communities.

60. Mr. ABOUL-NASR expressed reservations about the statement in paragraph 34 of the report that under Swedish labour legislation, all persons were regarded as equal, irrespective of their ethnic background or nationality. He took it that the statement referred to persons with a Nordic background, or possibly to all persons with a permanent right of residence, since others were apparently treated differently. Still on the subject of labour, he understood that in Sweden, as in many other countries, salary deductions were made at source for various social benefits, such as pensions. He wished to know whether the amounts paid into pension funds and the like were returned to the persons concerned in the event of their departure from the country for any reason.

61. He asked for further information on paragraph 33 and what the specific charges and verdict had been in the Radio Islam case. Speaking from personal experience, he said that pronouncements against Jews were taken more seriously and were more severely punished in general than equally prejudicial expressions of anti-Arab feeling. He also had some reservations about the term anti-Semitism, since the Arabs were Semites as well and there was more discrimination against Arabs in the world today than against Jews.

62. Mr. CORELL (Sweden), replying to questions raised by Committee members, said that the large number of questions and comments contributed to the dialogue between his Government and the Committee. The Swedish population had indeed, until very recently, been fairly homogeneous. In reply to Mr. Wolfrum and Mr. Song Shuhua, he said the reason why the report had dealt at length with immigrants and only briefly with the Sami population was that the latter numbered only 20,000, of whom 2,500 or so were engaged in their traditional

occupation of reindeer-herding. By contrast, every eighth Swede today was an immigrant or the descendant of an immigrant. That did not, of course, mean that the Sami population should be, or was, disregarded. In the previous few years a number of books had been published by the Sami Commission. Although they were not in English, two summaries in English would be forwarded to the Committee for information.

63. In response to the comments made by Mr. Wolfrum and Mr. Aboul-Nasr about preferential treatment for citizens from Nordic countries in regard to employment opportunities, he reminded the Committee that the Nordic countries worked in close cooperation and shared a wide range of common interests, including what might be termed a common labour market, meaning that all citizens of a Nordic country could work freely in the others. Any group of countries wishing to conclude cooperation agreements of that kind would be entitled to do so. The European Community (EC) was a case in point, and a careful study of EC policies and future arrangements should prove that a similar development was taking place there. In case the Committee was concerned about the common Nordic labour market - what about the EC?

64. Mr. Wolfrum had asked why in 1989 only 160 persons from non-Nordic countries had been granted permission to enter Sweden to seek work. In fact, the figure for 1989 had been 167, and in 1990 it had risen to 263. However, seen in isolation, the figure gave a false impression, as did the figure of 1,250 as Sweden's refugee quota. In fact, that was only a small part of the general picture: in 1989, a total of 44,672 people had been granted entry into Sweden. Of those, 24,800 had been refugees or persons of similar status, and some 18,000 had been relatives of persons already settled in the country. In 1990, the total had been 37,883, of whom some 13,000 had been refugees and some 22,000 persons with relatives in the country. It would thus be seen that the total number of immigrants in relation to Sweden's population of only 8.5 million was far higher than any other country in Europe. It should also be noted that Sweden was the chosen destination of refugees from many parts of the world, which could be taken as an indication of Sweden's position in regard to the Convention.

65. Mr. Wolfrum had also asked whether there were measures to protect immigrants applying for work in Sweden. The same point had been raised at the time Sweden's previous report had been considered, and the reply then had been that there were no special measures in that regard, since the principle of equal treatment in the labour market applied. In the same context, Mr. Banton had asked how the guidelines relating to the employment of immigrants, referred to in paragraph 39 of the report, operated. The real issue seemed to be whether discrimination could occur at the stage when an immigrant was seeking employment. It was interesting to note Mr. Peter Nobel's, the Ombudsman, statement that if legislation had been enacted to cover such a situation, he could not foresee that any successful prosecution could have been brought under it judging from the cases he had experienced so far. However, Sweden was indeed studying the problem posed by the fact that once in employment the worker was protected, but when he was applying for employment he received no protection under specific legal rules.

66. On Mr. Wolfrum's question as to what provision was made for scrutinizing legislation, he pointed out that the relevant chapter of the Constitution was not chapter 1, but chapter 2. Where the drafting of bills was concerned, the Legal Counsel in fact took great pains to advise the Minister concerned on the requirements of the Constitution vis-à-vis the bills, since if a bill, once drafted, was found to be in violation of the Constitution, the situation would be most embarrassing. The bill was first scrutinized by the Law Council, consisting of two judges of the Supreme Court and one judge of the Supreme Administrative Court, and examined again in Parliament by the Standing Committee on Constitutional Matters.

67. Where existing laws were concerned, chapter 11, article 14 of the Constitution laid down that if a court or any other public body considered that a provision conflicted with a provision of fundamental law or with a provision of any other superior statute, or that if procedure prescribed had been set aside in any important respect when the provision had been introduced, the provision could not be applied. There was thus well-established machinery for scrutinizing both proposed and existing legislation, although the possibilities of disregarding laws decided by Parliament and decrees decided by the Government were limited.

68. The important question of the relationship between freedom of speech and freedom of association had also been raised; the Government sought to strike a fair balance between the two. In Sweden, the right of association had very old traditions, and went back to well before the founding of the League of Nations. It had been through Sweden's freedom to form associations that the democratic tradition had taken root in the country.

69. Although the right to freedom of expression could be exercised freely, any violation of the law against incitement to racial discrimination was, of course, punishable. The difficult question then arose whether the association within which such a violation had been committed should be banned. The Government was now investigating whether regulations could be formulated to penalize racist offences without actually imposing a ban on the organization concerned. He urged the Committee to have confidence that Sweden was making genuine efforts to examine that problem and to achieve a proper balance.

70. Several members had asked questions about the regulations governing television and radio broadcasting by immigrant or minority groups. Under the Community Radio Act of 1982, such groups had to apply to the Community Broadcasting Commission to be granted air time, and once permission had been granted, they were subject to the same laws as those which governed other activities. He had been somewhat surprised at the questions raised on that point: he had thought the Committee would be aware that one of the cornerstones of freedom of expression was that there should be no prior censorship. Sweden's position was no different from that of other States parties to the International Covenant on Civil and Political Rights, in that, while there was full freedom of expression, individuals were held responsible for how they used that freedom either on the air or in print. Under the Freedom of the Press Act, which also applied to broadcasting, possible offences included expressions of contempt for a population group by allusions to race, skin colour, national or ethnic origin, or religious faith.

71. In reply to the point raised by Mr. Aboul-Nasr, such offences were considered as particularly severe and were dealt with by a very high-ranking Prosecutor, the Chancellor of Justice, whose task it was to bring them before the courts. In the particular case referred to in paragraph 33 of the report, he would inform the Committee of the judgement of the Supreme Court once it was handed down.

72. Mr. Wolfrum had asked for figures for the budgetary allocation for teaching minority groups foreign languages. In fact, the Swedish Ministry of Finance exercised tight control over budgeting in many areas; he was unable to supply precise statistics. However, the restrictions applied generally, and there was no question of singling out the means for the education of minority groups. Similarly, he was unable to say exactly how many immigrants were currently receiving primary, secondary and university education; they were given the same opportunities for schooling as all other Swedes. It might be that they were not represented at university level to the same extent as students of Swedish nationality, since it was only natural that they would take longer to be assimilated into Swedish society. Many immigrant children were also too young to have reached university level.

73. It was also difficult for him to reply to the question as to what extent Samis or immigrants were able to participate in Swedish life, and how many of them held senior positions. All that could be said was that they were given the same opportunities as everyone else; it was the aptitude of the individual concerned that was the sole criterion.

74. Mr. Wolfrum had expressed astonishment on learning that efforts to strengthen the legal status of the Sami people had been initiated only in 1990. That reaction seemed to be based on a misunderstanding. In fact, the Sami question had been a concern of the Swedish authorities for many years; it was natural that the main body of legislation relating to them should concern reindeer-herding, since that was their traditional occupation and way of life. He would be glad to hand to the Chairman summaries in English of the two main reports of the Swedish Sami Committee, which contained a substantial amount of information.

75. Land used for reindeer-herding could be State property, collective property or private property; herding rights were the same, irrespective of who owned the land, and were governed only by geographical location. Such rights were not affected by transfer of land ownership or title, were not limited in time and were not subject to any agreement. No rental was payable to the owner of the land or to anyone else, and herding rights could be abrogated only by Government decision; expropriation could be carried out only in accordance with the relevant legal provisions, in other words through a court ruling followed by appropriate compensation.

76. The Lapp codicil was no longer effective, because the subject of reindeer-herding with which it was chiefly concerned was now governed by a convention between Norway and Sweden, and its other provisions now had modern equivalents. The special Sami courts had ceased to function in the early

nineteenth century, and any matters relating to the Samis were now dealt with by ordinary courts. A joint Swedish/Norwegian Act had been adopted in the 1880s giving the Samis the right to move their reindeer from one country to the other; when the union between Sweden and Norway had ended, that Act had been replaced by a convention. The current convention dated from 1972 and would remain in force until 2002, and only if no new convention were adopted to take its place would the original Lapp codicil again emerge from the mists of time and re-enter into force.

77. A member had asked why Sami rights had not been taken into consideration when their land had been acquired by others. That question, too, was difficult to answer, since Sami lands had come under Swedish jurisdiction as early as the fourteenth century. All that could be said was that the rights of the Samis had been a constant concern of the Swedish Government for many years.

78. He pointed out that there were many competing interests in the Sami land area, which made up one third of Sweden and in which most hydroelectric power plants were located. The shores of the lakes which had been dammed to provide hydroelectric power were sometimes traditionally used for reindeer calving lands. It would be seen that it was difficult for the Government to strike a fair balance since the power produced supplied the whole country and only some 2,500 Samis lived off reindeer-herding.

79. On the question of provision of interpreters in court, Samis were given the same assistance as anyone else with language difficulties in such circumstances.

80. There were five Sami schools in Sweden for pupils aged between one and six years. The law required that the curriculum of such schools should be the same as in ordinary schools, except that the teaching should be in both Swedish and Sami, that the subject of Sami should be taught, and that issues of importance for the culture and living conditions of the Sami people should be addressed. Should a Sami school be closed for lack of pupils, the funds allocated to the school would be handed over to the Sami school board, which could use them to further Sami education elsewhere in the school system. In the budget for 1991, the Government was proposing that all members of school boards for Sami schools should be nominated by the Sami people themselves; Parliament was expected to take a decision on that proposal shortly.

81. On the question of the average income of a Sami, he again had no precise figures, but pointed out that while only some 2,500 to 3,000 were dependent on reindeer-herding, the vast majority of Samis lived all over Sweden and were engaged in many different kinds of work. Some of the Committee's questions had given him the impression that they believed the Samis led lives radically

different from those of most Swedes, whereas in fact, in most cases, it was difficult for Swedes themselves to tell whether or not an individual was of Sami origin.

82. In reply to the question whether Samis were employed in the higher levels of the civil service, he again stressed that applicants for such posts were never asked about their racial origins; appointments were made solely on the basis of merit.

83. The CHAIRMAN thanked the Swedish representative for the extensive information he had given and for the very fruitful dialogue he had engaged in with the Committee.

The meeting rose at 1.05 p.m.

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Thirty-ninth session

SUMMARY RECORD OF THE 902nd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 13 March 1991, at 3 p.m.

Chairman: Mr. SHAHI

CONTENTS

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

Tenth periodic report of Sweden (concluded)

Second Decade to Combat Racism and Racial Discrimination (continued)

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Tenth periodic report of Sweden (CERD/C/209/Add.1) (concluded)

At the invitation of the Chairman, Mr. Corell and Mrs. Orlov-Baumann (Sweden) took seats at the Committee table.

1. Mr. CORELL (Sweden), replying to the questions asked by Mr. Wolfrum, said that the 1987 Natural Resources Act had been devised partly in order to improve the status of the Samis. The Act was described in a report, of which a summary in English had been handed to the Chairman of the Committee; members might usefully consult that summary.

2. Sweden had never officially appointed an ombudsman for Sami affairs. Admittedly, the representative of the national Sami organization had always called himself an ombudsman, but that organization was private in character. It was possible that a post of ombudsman might be created at the Nordic level, but it would be premature to discuss the matter at the present stage.

3. With regard to the Kitok case, which Mr. Banton, too, had mentioned, asking why Sweden had not referred to it in its report, he explained that the report had been drawn up in cooperation with six or seven different ministries and that the omission might have been an oversight. Recapitulating the case, he said that Ivan Kitok was a Swedish Sami whom a Sami village, an economic entity, had refused to accept as a member of the community, also denying him grazing rights on the lands allotted to the village. In Sweden there was a distinction between Sami reindeer breeders and the much larger number of Samis who did not belong to that group. The reason was that the surface area of Sweden was insufficient to allocate the necessary grazing land to every Sami. The problem was being studied by the Government, but there seemed to be no other way of settling the issue. In the circumstances, Mr. Kitok had nevertheless been able to graze his herds on lands belonging to members of the Sami village.

4. Referring to the status and sources of income of Samis who did not belong to the reindeer-breeding group, he explained that they were able to engage in handicrafts and cultural or artistic activities. Many teaching posts were also open to them. However, many of them chose to integrate themselves into Swedish society, with the result that they had jobs similar to those of any other Swede.

5. Mr. Wolfrum had asked about the possibility of establishing a representative organ for the Samis that would be common to Sweden, Finland and Norway. There was a Sami Parliament in Finland and in Norway, and the question was under study in Sweden. Meanwhile, the Samis maintained cross-frontier relations and moved freely from one country to another with their herds. An Institute for Sami Affairs operating under the auspices of the Council of Ministers of the Nordic Countries allocated funds to the Sami community.

6. With reference to the Ombudsman against Ethnic Discrimination mentioned in paragraph 29 of the report, whose status Mr. Wolfrum had described as "inferior" to that of the parliamentary ombudsman, he wished to point out that Sweden had no obligation to establish such a mechanism under the Convention. The Ombudsman against Ethnic Discrimination had deliberately been given powers that fell short of those of the parliamentary ombudsman, whose office was a traditional institution that had existed for two centuries. On behalf of his Government, he objected to the word "inferior" since he considered that States that applied stricter rules than those laid down in the Convention were entitled to select the arrangement that appeared to them to be the most effective.

7. In reply to Mr. Wolfrum's question whether the referendum in the municipality of Sjöbo, in which 67.5 per cent of the population had voted against accepting new refugees, had been an isolated case or whether there had been other initiatives of that kind, he said that in Sweden research had been carried out on the forces that gave rise to xenophobia or hostility towards refugees. The phenomenon seemed to occur in rather remote locations, where the possibility of meeting persons from other places were rare. Furthermore, Swedish municipalities were autonomous in many matters; they themselves determined the number of refugees they were willing to accept, because of the related social services which they had to provide. At Sjöbo, the outcome would have been different if those concerned had been made aware of the problems faced by refugees and instructed how to behave towards them. The referendum which had taken place there was consequently an exception, and the initiative had been sharply criticized.

8. He did not have any accurate information regarding cases of aggression against refugees in Sweden. In future crime statistics, however, race-related offences were to be entered separately from ordinary offences. His experience as a judge in a small Swedish community had taught him that race-related offences were often committed by individuals or groups at the lower end of the social ladder, with the result that such incidents seemed to be connected with ordinary crime. The Swedish authorities were, however, determined to combat the kind of outbreaks that had occurred in the various places mentioned.

9. He then referred to the statements made by other members of the Committee. In reply to a question asked by Mr. Lechuga Hevia, he said that the information on the Bill of February 1990 given in the report and in his introductory statement was the most recent at his disposal. With regard to the question as to whether other offences relating to freedom of expression committed in local radio broadcasts had been punished, reference should be made to the previous reply. Mr. Lechuga Hevia had also requested further information regarding the health and mortality of the Samis. In that connection, too, the figures for the Sami population group should be the same as those for all other Swedes. The Samis, who practised animal husbandry with ultramodern equipment, had a reasonably satisfactory standard of living.

10. With reference to Mr. Song Shuhua's request for further information on progress made in reviewing the Act to Counteract Ethnic Discrimination mentioned in paragraph 36 of the report, he drew attention to the reply given earlier to Mr. Lechuga Hevia's question. As to the question regarding Sami

representation in the Swedish Parliament, he explained that in order to be elected any candidate must receive at least 20,000 votes and the Sami population amounted to less than that figure.

11. There was absolutely no question of approving abusive practices in the use of force by the police. In Sweden, the police were the only body authorized by law to use force. It was thus inconceivable that the army could be used to keep order in Swedish society. Nevertheless, the quid pro quo for the right to use force was the principle of proportionality. In other words, a police officer who exceeded his powers was prosecuted. The question whether it was possible for the police to use force in a democratic society therefore called for an affirmative answer, in so far as any democratic society had to defend its values as well as the interests of others. In a broader perspective, the same principle applied to the United Nations, which was empowered, under Article 42 of its Charter, to resort to force in order to defend the principles underlying the Charter.

12. He was not in a position to supply statistics on the growth of the Swedish population as compared with that of other "races", as Mr. Song Shuhua had requested. It was difficult to provide that kind of information because of the population mix and because in Sweden, where one inhabitant out of eight was an immigrant or the descendant of an immigrant, it might no longer be possible to draw a distinction between different Swedes on an ethnic basis.

13. Replying to the questions asked by Mr. Vidas, he pointed out that two summaries in English of the results of the work done by the Commission to Study Measures against Ethnic Discrimination had been distributed to the Committee. Furthermore, although there were no statistics available on the matter, children of immigrants were apparently more likely to be placed in the custody of the welfare services than children of Swedish citizens. Immigrants who were not in a position to take care of their children apparently preferred that arrangement to having their children placed in a family, in which the child might become attached to the foster parents. Nevertheless, all available statistics would be included in the next report.

14. Turning to the questions asked by Mr. Banton, he said that many projects to combat segregation in housing were under way. In the circumstances it often happened that, on their arrival in an unknown country, foreigners preferred to gather together and to have a chance of meeting one another frequently. The problem was therefore one of finding places where they could meet, and in that respect there was no justification for concluding that segregation was necessarily a bad thing. In addition, Mr. Banton, in comparing the Swedish Constitution with that of the United States, had affirmed that the latter was a living instrument, being taught in schools. However, apart from the fact that the United States Constitution was relatively short, the important point was not that the population should read it sedulously, but that Parliament, the Government, the authorities and the courts should abide by its provisions. Sweden, for its part, took particular care to respect the principles of its Constitution, which were often based on international instruments to which it had become a party.

15. Immigrant organizations, mentioned in paragraph 36 of the report, could make their views known either as members of the Commission to Study Measures against Ethnic Discrimination or when bills submitted by the Commission to Parliament were considered.

16. Mr. Banton had requested further information on the implementation of the principles set forth in the brochure entitled "Immigrant Issues at Company Level" (para. 39). The relevant information was not available at the moment, but the question had been carefully noted.

17. Referring to Mr. Reshetov's statement, and particularly his question whether the Supreme Court had ruled in the case mentioned in paragraph 33 of the report, he said that the case was proceeding normally and that the Committee would be informed of the judgement as soon as it had been handed down. No other case of that kind had occurred.

18. With reference to paragraph 38 of the report, Mr. Reshetov had stressed the need to adopt a humanitarian rather than a legal approach in immigration matters. In that connection it should be borne in mind that the ordinance referred to had been in force for less than a year; information on its implementation would be supplied in the next periodic report.

19. Mr. Reshetov had expressed the view that the Swedish Government had taken a somewhat paternalistic approach towards the Samis. In that connection it should be pointed out that the international community had originally advocated the assimilation of minorities, whereas the modern approach, which was certainly that of the Committee, stressed the need to preserve their identity. Consequently, there was nothing paternalistic about establishing a commission for Sami affairs, about wanting the Sami minority to be represented in it, or about proposing the establishment of an independent Sami parliament.

20. In reply to the question whether racist organizations existed in Sweden (para. 76), he explained that various amendments to Swedish legislation had had the effect of paralysing such organizations.

21. Foreigners were able to participate in municipal elections if they had lived in Sweden for at least three years.

22. Lastly, taking up Mr. Reshetov's comment that Sweden should, when observing what happened beyond its frontiers, bear in mind the need to respect the commitments which Sweden itself had entered into under international instruments, he replied that Sweden had never claimed to be above all criticism and that it had accepted comprehensive international controls in human rights matters. Consequently, the Swedish Government was justified in stating its views before international authorities since it endeavoured to abide by its international commitments to the best of its ability and did not seek to avoid being scrutinized by those authorities.

23. Mr. RESHETOV explained that his question had been concerned not with the way in which Sweden discharged its obligations, but with the way in which it reacted to situations that occurred elsewhere in the world.

24. Mr. CORELL (Sweden) replied that, in various international forums, his country extensively expressed the concern it felt at certain situations in the world.

25. Replying to Mr. Yutzis, he explained that Swedish legislation referred to "unlawful" discrimination, whereas the Convention, notably in article 1, was concerned with racial discrimination. Unlawful discrimination must be taken to mean discrimination that was punishable under the Swedish Penal Code. With regard to Mr. Yutzis' comment on paragraph 32 of the report, he admitted that the paragraph could have been better drafted. The intention in the report had been to say that, while strengthening freedom of expression, Sweden wished to make it possible for the supervisory authorities to react quickly in cases where that freedom was abused.

26. The explanation given in paragraphs 101 and 102 of the report would perhaps be better understood if it were realized that parents had the right to refuse to allow their children to attend compulsory courses of instruction not only in Christianity but also in other religions such as Judaism, Islam and Buddhism. He personally regretted that parents should adopt that position, but it must be made clear that when that happened, the headmaster arranged for the pupils to receive religious instruction in a church or body approved by the parents.

27. In reply to a question asked by Mr. Aboul-Nasr concerning paragraph 34 of the report, he said that persons who came to Sweden as tourists could not work there unless they obtained the necessary residence and work permits. When they had obtained a work permit, the pensions to which they contributed were paid at the appropriate time.

28. Lastly, commenting in general on his delegation's replies, he said that it would be difficult to answer all the questions asked by members of the Committee, whose workload would also be increased as a result. A delegation should therefore not be reproached too hastily for having left some questions unanswered, and there was even less reason to conclude that by doing so the State party concerned was not adequately complying with its obligations. Moreover, when the Committee acknowledged that a State party was discharging its obligations in a particularly effective manner, it was paradoxical to ask it even more questions; fairer treatment would be desirable. He hoped that there would be an exchange of views on those points.

29. Mr. ABOUL-NASR acknowledged that Sweden's tenth periodic report was a good report, submitted by a State party which was recognized as paying the highest attention to human rights. If many questions had been put to the Swedish representative, that was simply because members of the Committee wished to know more about Sweden; it implied no criticism. Admittedly, the Committee sometimes asked fewer questions regarding reports which reflected less satisfactory situations, but its questions should not be misinterpreted.

30. For example, in order to answer the question he had asked concerning paragraph 33 of the report, it was not absolutely necessary to wait for the Supreme Court's decision. Moreover, in the reply which he had given on the subject of the Samis, the swedish representative had appeared to presume that non-Samis could not vote for a Sami candidate; on the basis of that

supposition, he had seemed to consider it obvious that the Samis, of whom there were only 20,000, were not sufficient in number to elect a representative. It had also been surprising to hear it stated that the Scandinavian languages were one and the same language. Could the same thing then be said of Spanish, French and Italian because they were descended from Latin?

31. The comparison made by the Swedish representative between the Committee on the Elimination of Racial Discrimination and other committees did not seem to be relevant. The mandates of the various committees varied according to the instruments with which they dealt: for example, freedom of expression was not approached in the same way in the Covenants and in the International Convention on the Elimination of All Forms of Racial Discrimination. And he had been surprised to hear, in substance, that segregation was not always an evil. He had to go back a long way to recall having heard such an affirmation at a United Nations meeting; on that occasion it had been made by a representative of South Africa.

32. Despite the observations he had just made, he reiterated his respect for Sweden's human rights record; he for his part would continue to pursue with interest the dialogue with that country's representatives.

33. Mr. RESHETOV noted that the Swedish representative had stated that his country's legislation was based on international instruments, including the European Convention on Human Rights. Was it also based on the International Covenants, whose compatibility with the European Convention had long been recognized? With regard to the Samis, he pointed out that the Sami nation was represented in the Supreme Soviet, even though in the Soviet Union it comprised only a few thousand persons. Referring to article 5 (c) of the Convention, he stressed that the Samis, as Swedes, should participate in the consideration of national questions and not only of questions of particular concern to Samis.

34. Mr. WOLFRUM noted that the Swedish representative's concluding remarks called for a further exchange of views, even though that was unusual in the Committee's deliberations. He explained to the Swedish representative that in his own observations on freedom of opinion he had not implied any criticism, but had wished to stress the balance that must be preserved between respect for the rights set forth in article 5 of the Convention and the prohibition of racial discrimination. On the question of the Ombudsman against Ethnic Discrimination, he welcomed the fact that such an arrangement, which was typically Swedish in origin, had been exported to other countries; at its present session the Committee had learned, for instance, that it had been incorporated into Portuguese legislation. Nevertheless, it had to be stated that the Ombudsman against Ethnic Discrimination had less competencies than the other Ombudsman and thus the unqualified reference thereto gave an incorrect impression. Concerning the racist incidents mentioned, he would like to know whether the offenders had been prosecuted. That information would be particularly interesting since Sweden had a developed judicial system for dealing with minors; it would therefore be helpful if some information on the subject could be given in the next report.

35. Lastly, since all members of the Committee had been impressed by Sweden's tenth periodic report, he suggested that it should be distributed in Sweden; other countries had already taken such an initiative.

36. Mr. YUTZIS said the reason why the experts on the Committee asked many specific questions was that States parties had given them a mandate to supervise observance of the Convention. States parties could always improve the tools available to them for implementing the Convention, particularly by engaging in a dialogue with the Committee.

37. The Committee was not, of course, a court, although its members were led, by force of circumstances, to make value judgements which they then tried to explain to the best of their ability.

38. The religious instruction courses mentioned by the Swedish representative could be called "courses in comparative religion" and it was regrettable that parents should request that their children be exempted from them, since they provided children with an opportunity to enrich their knowledge of the different religions of the world.

39. He wondered whether the Swedish representative's reference to unlawful discrimination meant that there could also be forms of discrimination that were lawful.

40. Paragraph 32 of the report showed that, for the Swedish authorities, freedom of expression took precedence over the prohibition of acts of racial discrimination. He would prefer it if the reverse were the case.

41. Mr. BANTON said that by stating that segregation was not necessarily a bad thing, the Swedish representative had undoubtedly meant that he saw nothing wrong in the fact that immigrants chose to settle in the same district.

42. Such a decision, however, could have harmful consequences for children - a problem to which the State should give some thought.

43. Mr. LAMPTEY said he fully agreed with Mr. Banton; the fact that people chose of their own accord to live together in the same area could not be described as segregation. For segregation to exist, it would be necessary for the persons concerned to be discriminated against.

44. Mr. de GOUTTES said that only bad reports elicited silence; he expressed satisfaction at the dialogue that had been established between the Committee and the Swedish representative.

45. He would like to know whether the organs responsible for combating racial discrimination were not too many in number, whether there were conflicts of competence between them, and whether efforts were being made to coordinate their activities.

46. The CHAIRMAN paid tribute to Sweden for the efforts it was making to combat racial discrimination and, speaking in a personal capacity, asked the Swedish representative whether the Ombudsman against Ethnic Discrimination

had, as in Pakistan, competence to settle promptly certain conflicts between employers and employees which, if they were brought before the courts, would take a long time to be resolved.

47. Mr. CORELL (Sweden) assured members of the Committee that he held them in high esteem and that his country attached the greatest importance to their work.

48. He thanked Mr. Banton and Mr. Lamptey for having dispelled the misunderstanding which had arisen as a result of his having used, perhaps wrongly, the word "segregation". Replying to Mr. Banton's point, he recognized that the children of immigrants who had decided of their own accord to settle in the same area might experience problems of integration and informed the Committee that the Swedish Government was currently examining the question.

49. In stating that the Samis were only 20,000 in number and could not therefore be represented in the Swedish Parliament, he had merely been supplying the Committee with information. A public opinion poll would probably find that their electoral behaviour was no different from that of other Swedish citizens. The establishment of a Sami parliament would enable the Sami population to safeguard its interests more effectively vis-à-vis the Swedish authorities.

50. In reply to Mr. Wolfrum, he said that only censorship could prevent racist remarks from being made on local radio broadcasts, and that would be contrary to Swedish legislation. Criminal proceedings could be instituted only after offences had been committed.

51. The questions asked by Mr. Yutzis, Mr. de Gouttes and the Chairman would be answered in the next report.

52. In conclusion, he expressed satisfaction at the fruitful dialogue which he had had with members of the Committee and assured them that Sweden would always be willing to assist them in their efforts to combat racial discrimination.

Mr. Corell and Mrs. Orlov-Baumann (Sweden) withdrew.

53. Mr. WOLFRUM, making the final assessment of the report of Sweden, welcomed the fact that that country was continuing a frank and constructive dialogue with the Committee and that it attached great importance to efforts to combat racial discrimination, whether it be in Sweden or on an international scale.

54. The Committee also appreciated the fact that Sweden had accepted many refugees and immigrants, whom it was endeavouring to integrate into Swedish society.

55. It was nevertheless disturbing that Sweden should have recently limited the number of immigrants and the resources devoted to their integration. The Committee should call on Sweden to redouble its efforts to combat the feelings of hostility towards refugees which had recently become apparent.

56. Rather than trying to integrate the Samis into Swedish society, the Government should endeavour to preserve their specific cultural identity. In that connection, it was gratifying that the Swedish Government was now contemplating to follow the Norwegian example and to establish a Sami parliament.

57. Mr. FERRERO COSTA observed that once again the question arose of the relationship between freedom of expression and prohibition of racial discrimination. He hoped that the Committee would devote a thoroughgoing debate to that fundamental problem.

SECOND DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION (agenda item 7) (continued)* (General Assembly resolution 45/105; E/CN.4/1991/43; A/45/525)

58. Mr. BANTON said that in addition to documents E/CN.4/1991/43 and A/45/525 and General Assembly resolution 45/105, account should be taken under that item of the report of the Secretary-General (A/45/443) which, in paragraphs 30-33, contained the views of the Committee on the questions under consideration and of the report of the Committee to the General Assembly (A/45/18), which in paragraphs 323-333 contained somewhat more detailed information on the same subject.

59. At the present meeting, the Committee could resume its exchange of views on the efforts that might be made to bring about the universal implementation of the Convention. In that connection, he drew the Committee's attention to a request by the Sub-Commission on Prevention of Discrimination and Protection of Minorities to the Secretary-General to prepare an outline of possible activities for increasing the effectiveness of United Nations action to combat racism and racial discrimination (A/45/443, end of para. 19). From the standpoint of the Committee, the major obstacle to increasing the effectiveness of such action was the lateness with which several States parties to the Convention submitted their reports. For that reason, he had prepared a draft resolution, which had been distributed to members of the Committee, and requested them to make known any amendments they might wish to propose.

60. If the Committee decided to adopt a resolution which enabled it to envisage the implementation of the Convention in States parties which, for no valid reason, were considerably behind in submitting their reports, it might mention a few States in that situation, such as Belgium, Greece, Guyana, Sierra Leone and Swaziland, for example, and then appoint rapporteurs for two or three of those States parties and make an announcement to that effect. That might encourage the States in question to submit their reports, for if there was a possibility that the Committee might consider the implementation of the Convention in those States parties, those States might conclude that it would be much better for the Committee to do so on the basis of their own reports. If that initial measure proved unavailing, the Committee would have to proceed with great caution, so as not to leave itself open to criticism.

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* Resumed from the 899th meeting (second part).

In the case of some - if not all - of the States mentioned by way of example, the rapporteur would have a sufficient volume of information to enable the Committee to hold a brief debate on which to base its report.

61. In his opinion, that was an initiative which the Committee might take in order to ensure that the Convention was more effectively and more widely implemented than was the case at the present time.

62. Mr. LAMPTEY said that on the agenda item under consideration the Committee should reiterate some of the decisions it had taken at the end of the previous session. The question of joint meetings with the Sub-Commission had been considered at the previous meeting, when several members had described the contributions they were prepared to make.

63. He had very strong reservations about the draft resolution submitted by Mr. Banton and did not believe that it was likely to assist the Committee in promoting the universal implementation of the Convention.

64. The adoption of the draft resolution would have two consequences. First, when a State party had, for a considerable period, failed to discharge its obligation to submit reports, the Committee would appoint a rapporteur who, drawing on other sources of information, would prepare a report on the implementation of the Convention by that State party; that report would then be considered by the Committee prior to its submission to the General Assembly. Secondly, since the principle of non-discrimination was incumbent on all Members of the United Nations, the Committee might also wish to report on the situation with regard to racial discrimination in countries which had not acceded to the Convention.

65. Since its inception, the Committee had already had occasion to express an opinion on possible information sources and had decided to confine itself to information supplied by States parties in their reports; that was in fact consistent with the Convention, article 9 of which stipulated that States parties should submit reports for consideration by the Committee and that the Committee should make recommendations and observations based on the examination of those reports. Admittedly, any knowledge the experts might have of the history, geography, etc. of a particular State party might be useful on the occasion of the Committee's consideration of that State party's report, but the Committee had not allowed the experts to use newspaper articles or reports originating from other organizations. Before reconsidering that practice, members of the Committee must clearly realize that the Committee itself had helped to create the climate of trust thanks to which it had been possible to establish other treaty-monitoring bodies, operating in much the same way as the Committee itself. They must also clearly realize that the questions of racial discrimination with which it dealt were extremely political in nature and were often used for propaganda purposes, in the face of which the various States were not all of equal strength.

66. The new procedures which the Committee proposed to adopt raised difficulties both with regard to the States parties to the Convention and with regard to other States.

67. Mr. BANTON said that the last two operative paragraphs of the draft resolution which he had proposed concerned only States parties to the Convention. However, the first operative paragraph also concerned States that were not parties to the Convention. Given the difficulties which the passage in question might create for certain members of the Committee, he was prepared to delete it.

68. Mr. LAMPTEY said that he would accordingly confine his comments to the situation which would result from the adoption of the draft resolution proposed by Mr. Banton with regard only to States parties. First, if the Committee decided that when a State party had, for a considerable period, failed to discharge its reporting obligation, the Committee would be able to have recourse to other sources of documentation and information, it must decide what those sources should be, and that procedure would have to be deemed acceptable by the States parties, since it deviated from that provided for in article 9 of the Convention. Secondly, if the Committee decided to use material other than State party reports when States parties had not submitted their reports, it must not, in the case of States which had discharged their obligations, content itself with their reports but must, out of fairness, also refer to those sources. On that point too, therefore, the Committee must take a decision. And thirdly, he did not consider that the draft resolution proposed by Mr. Banton was likely to contribute to the universal implementation of the Convention; it was not the role of the Committee to exert "pressure" on States parties.

69. The CHAIRMAN reminded the Committee that at their third Meeting the chairpersons of the human rights treaty bodies had discussed the question of information sources other than the reports submitted by States parties (A/45/636, paras. 38, 40 and 42). Those sources were at the disposal of the Committee when it assessed the reports submitted by States parties. What, however, was the situation in the case of a State party which had not submitted a report?

70. Mr. GARVALOV, speaking on a point of order, said that before continuing the discussion the Committee should decide a preliminary question: was it competent to consider the implementation of the Convention by a State party in the absence of a report by that State party? The answer to that question depended on the interpretation given to article 9, paragraph 2, of the Convention. According to a narrow interpretation, the Committee was competent to make suggestions and recommendations based on the examination of the reports of States parties. According to a broad interpretation of the same paragraph, since the Committee reported on its activities, that could include consideration of the implementation of the Convention by a State party based on information sources other than the report.

71. Mr. BANTON said he did not think there was much difference between Mr. Lamptey's view and his own view. If, in the absence of reports from the State party, the Committee used other information sources, it would have to exercise infinitely more caution that if it used those same sources when the State party had submitted a report. Citing the case of Belgium by way of example, he said that it would be possible to find information on that country in documents available to the Centre for Human Rights, in reports and statistics originating from Belgian authorities, and in the report of the

working group of the European Parliament. Replying to Mr. Garvalov, he said that if the draft resolution he had proposed was approved by the Third Committee, under implementation of the Programme of Action for the Second Decade to Combat Racism and Racial Discrimination, it seemed to him that the Committee would be competent to report on its activities other than the consideration of reports submitted by States parties.

72. Mr. ABOUL-NASR emphasized the legal aspects of the question under consideration. He did not see how the Committee could be competent to report on the existing situation with regard to racial discrimination in a State party on the basis of anything other than the reports submitted by that State party itself. To use other material would be to go against the Convention, and only States parties could authorize procedures different from those provided for in the Convention. Not even the General Assembly could do that. And moreover, what would those other information sources be? If the Committee requested the Secretary-General to make available to it the confidential complaints and other documents he received, even documents relating to the Committee's sphere of competence, he could not, legally speaking, accede to such a request, which was contrary to the Convention. Books, newspaper articles and various reports could admittedly help the Committee in its task of examining a report submitted by a State party, but the Committee could not, on the basis of the study of such sources, report on a State party which had not itself submitted a report. There were limits to what the Committee could do, and the Committee must bear them in mind.

73. The Committee's functions were not confined to those provided for in article 9 of the Convention. Article 15, paragraph 2, provided that the Committee should receive copies of petitions from the United Nations bodies which dealt with matters directly related to the principles and objectives of the Convention, and that it should express an opinion and make recommendations on those petitions. However, the Committee now received hardly any documentation under article 15, contrary to what had occurred during the early years of its existence. It could therefore make a recommendation requesting the Secretary-General, on the occasion of the Second Decade to Combat Racism and Racial Discrimination, to pay greater attention to the work of the Committee in the areas covered by article 15 of the Convention and to communicate to it a greater volume of relevant documentation.

74. Mr. SHERIFIS said that, in his opinion, the question being discussed by the Committee came under item 3 (submission of reports by States parties) and not item 7 of the agenda.

75. The purpose of the draft resolution proposed by Mr. Banton was to promote universality of implementation of the Convention. He (Mr. Sherifis), however, did not consider that the draft resolution served that objective; quite the contrary, it might alienate States parties. Moreover, he did not consider the proposed action to be correct. The Committee was studying a draft resolution of a general nature whereas what it had in mind was a list of very specific countries. Why place Belgium in the forefront of those countries? Some of

the countries to which the Committee had sent reminders were much further behind in submitting their reports. And it was not the General Assembly but the States parties themselves that the Committee must address if it wished for authorization of procedures not provided for in the Convention. In the General Assembly, there were in fact 40 or so Member States which were not parties to the Convention and on which it was accordingly not incumbent to approve the working methods to be followed by the Committee in studying the implementation of the Convention in States parties.

The meeting rose at 6.10 p.m.

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18 March 1991

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Thirty-ninth session

SUMMARY RECORD OF THE 903rd MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 14 March 1991, at 10 a.m.

Chairman: Mr. SHAHI

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Second Decade to Combat Racism and Racial Discrimination (continued)

The meeting was called to order at 10.15 a.m.

SECOND DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION (agenda item 7) (continued) (A/45/443 and A/45/525)

1. Mr. VIDAS said that he shared Mr. Banton's concern at delays in the submission of reports by a number of States parties despite many appeals and reminders. Clearly, however, the Committee could consider the situation in particular States parties only on the basis of reports submitted by those States. It would not be possible for the Committee to participate in the implementation of the Convention if it did not have the relevant reports of States parties.

2. He suggested that the Committee might adopt the first three paragraphs of Mr. Banton's proposed draft resolution but replace the fourth and fifth paragraphs by a paragraph in which it would express its concern at the fact that certain States over the previous five years had not submitted a report, and would invite the General Assembly to request the Secretary-General to use his authority vis-à-vis the Governments of those States to persuade them to comply with their obligations under the Convention.

3. In that way, the Committee would endeavour to persuade those States to comply with the Convention by exerting additional pressure on them through the General Assembly and the Secretary-General, but always on the strict basis of article 9, paragraph 2, of the Convention. According to Mr. Banton, between 5 and 10 States constituted the most outstanding cases of non-compliance; the Committee might examine those cases with a view to selecting from among them those which could most appropriately be covered by the new fourth paragraph.

4. Mr. FERRERO COSTA commended Mr. Banton's intentions as reflected in the draft resolution. Unfortunately, however, the draft was not viable. It was not possible for the Committee under its mandate to initiate such action in the case of a State party which had not submitted a report.

5. Article 9, paragraph 1, of the Convention stipulated that States parties undertook to submit a report "whenever the Committee so requests. The Committee may request further information from the States parties." That meant that any report must be requested from the State party concerned. Article 11 explained the actions which could be taken if a State party was not giving effect to the provisions of the Convention; it did not empower the Committee to take action ex officio. The remedy always lay between the Committee and the State party. In any case, the Committee could not go beyond the provisions of the Convention itself. He hoped that Mr. Vidas would develop his proposal further, but not on the basis of the approach suggested by Mr. Banton.

6. Mrs. SADIQ ALI noted that Mr. Lamptey had expressed concern about the sources the Committee might use in the compilation of reports. A suggestion had also been made by Mr. Garvalov to the effect that article 9 might be split into two and that the Committee should report on its activities annually through the Secretary-General to the General Assembly. That could be interpreted in a broader form and perhaps applied to what Mr. Banton had

proposed. She suggested that, in the last paragraph of Mr. Banton's draft resolution, the word "authentic" should be inserted between "other" and "documentation and information". All in all, she welcomed Mr. Banton's proposal, which represented a means of making progress.

7. Mr. RESHETOV endorsed the views of Mr. Ferrero Costa and Mr. Vidas regarding the last paragraph of Mr. Banton's draft resolution. If the Committee was to use other sources of information for assessing the situation in States which had not submitted reports, the question would arise whether it could use similar information in the case of States which had submitted reports. If the Committee followed the procedure suggested by Mr. Banton, it would be changing its working methods and would in fact be operating on lines similar to those of the Commission on Human Rights and the Sub-Commission. The question of the role of non-governmental organizations (NGOs) would then arise as they would clearly be an alternative source of information. The nature of the Committee would thereby be changed and it would lose its character of independence. There was further potential in the method currently employed by the Committee, namely, reports. The Committee's problem was that it was not permitted to use all available means in order to achieve its goal. Its approach was the correct one but the question was how it could use the experience available to it. Changing the whole basis of the Committee's work would not help it achieve its goals.

8. Mr. LECHUGA HEVIA said that all would agree with Mr. Banton's goal; the problem was how to attain it. The Committee's mandate did not allow it to use Mr. Banton's approach; it could only use reports submitted by States parties. The approach proposed by Mr. Vidas could, however, form the basis of an acceptable solution.

9. The Committee might consider asking the General Assembly to look into violations in States parties which had not submitted reports, without specifying any State by name. The General Assembly could then investigate them and address the problem of non-submitting States. It would be dangerous to use other sources.

10. Mr. WOLFRUM agreed with the views expressed by Mr. Vidas, Mr. Ferrero Costa and Mr. Reshetov. He welcomed the innovative approach suggested by Mr. Banton, but the Committee's mandate did not permit it to pursue the actions suggested. The Committee must have a State party report as the basis for its action.

11. The wording of article 9 of the Convention could not be amended by the General Assembly or even by a statement of interpretation by all States parties. The only means of securing change would be by amending the Convention, but that would be undesirable.

12. Apart from the legal consideration, there were practical problems in trying to use other information. Mr. Lamptey, for example, had asked what sources the Committee should rely on. The Committee should not attempt to

emulate the Commission on Human Rights or the Sub-Commission. It must adhere to its own mandate, while those other two bodies should comply with theirs.

13. Mr. LAMPTEY said that he would like to clarify a point he had made at the previous meeting. What he had said was that Mr. Banton's proposals were not feasible for the Committee even if a majority of members wanted to take further action. There must be an initial decision on the sources to be used.

14. Mr. Banton's proposal was to be commended. He had two concerns: fulfilment of the reporting obligation and universality of the Convention. The Committee was not in a position to adopt the method proposed, but the problem could be tackled in another way. The Committee might request the Secretary-General to draw the attention of the States parties at their next meeting to the fact that, despite reminders, certain States had refused to comply with the obligation they had undertaken under article 9, paragraph 2, of the Convention, and thus there was the need for them to consider what action should be taken to obtain fulfilment of the obligation by such States parties.

15. On the question of universality, when the Convention had been adopted in 1965, the objective had been that all States Members of the United Nations should become parties to it. Relatively few had failed to do so but there was no reason why the General Assembly could not be requested to consider further action in persuading States which had not yet acceded to do so now.

16. He believed the Committee had earlier taken a decision on sources. The practice of the Committee had been to restrict the sources it used. The complexion of the Committee had, however, changed in the past few years and more recently there had been some confusion regarding sources. As he recalled, at a session of the Committee in Vienna in 1976 documents from an NGO had been put before it. That had led to a crisis and the Secretariat had been criticized for submitting those documents. In order to clarify the situation, it might perhaps be time to consider the question of additional sources, not for the sole benefit of the country rapporteurs, but for the purpose of clarifying for all what sources of information in addition to States party reports, could be permitted. He suggested that a formal recommendation could be made in this regard at a later stage.

17. Mr. SONG Shuhua, commending the work done by Mr. Banton, said that he, too, was concerned about universal accession to the Convention. The question of the use of sources of information other than government sources should be discussed prior to the consideration of States parties' reports. The effectiveness of the Committee's work was enhanced by good-quality information. The use of unverified or unreliable information would have the opposite effect. At the previous session, an interesting, indeed serious, situation had arisen in which documents had been distributed by representatives of a women's organization to all members of the Committee except himself. The effectiveness and indeed standard of the Committee's work were at stake. Information given by Committee members during the discussions

was reflected in the summary records, upon which the Committee's report to the General Assembly was based. A thorough discussion of the sources of information was therefore needed.

18. Mr. FERRERO COSTA expressed agreement with Mr. Lamptey's proposals, but considered that the question of sources of information, which was not on the agenda for the current session, should be deferred for discussion at the next session. As far as he was aware, there were no prior decisions of the Committee on that issue and he would be in favour of a further discussion in which he could air his own views.

19. Mr. RESHETOV said he did not wish to give the impression that he objected in principle to the use of information provided by NGOs. Books, newspapers and magazines, and documents produced by NGOS, academics, lawyers and other sources were very useful in providing a more comprehensive picture of the situation in the countries concerned. Committee members, as experts, would of course exercise discretion in assessing the content and reliability of the information provided. What would be unacceptable would be the exclusive use of information provided by NGOs.

20. Mr. GARVALOV, referring to his statement at the previous meeting, said that he endorsed the Committee's interpretation of article 9 of the Convention, on which there was unanimous agreement. What must be recognized, however, as he had observed from his own experience of United Nations deliberations on the subject, was that there was a minority in favour of a broader interpretation of article 9.

21. Mr. Banton's points were very valid and must be taken up. His own country was among those whose reports were overdue. He agreed that the Committee should make its views known to States parties, the General Assembly and other competent United Nations bodies. Although his view differed from that of other Committee members in that he thought consideration of a report in the absence of a government representative should be avoided, on the question of sources of information he maintained that some of the sources in question were highly authoritative and instructive and should not be disregarded.

22. Mr. VIDAS supported Mr. Ferrero Costa's proposal to include the important question of sources of information in the agenda for the following session.

23. Mr. de GOUTTES said that Mr. Banton's proposal had the merit of opening a debate on an issue which he, as a relative newcomer to the Committee, had been given to understand was almost taboo, namely, article 9 and sources of information. The question was a fundamental one for the Committee, relating as it did to the Committee's assessment of a situation in a given country. Credit was due to Mr. Aboul-Nasr and Mr. Lamptey for drawing attention to the legal limitations involved. To his mind, a distinction should be drawn between the sources of information concerning countries which had not submitted a written report, and those concerning countries which had. In the first instance, there seemed to be a consensus that the Committee should make use of every available opportunity to exert pressure on the defaulting States,

for instance, by approaching them through direct contacts, by volunteer members of the Committee. The question of assessing the situation of non-reporting States on the basis of external sources was a complex one which required further discussion.

24. On the question of the situation of countries that had submitted a report, the experts should on no account be asked to disregard other sources, such as NGOs, whose documents were indeed often circulated as official United Nations documents. He drew attention to paragraph 38 of the report of the third Meeting of persons chairing the human rights treaty bodies (A/45/636), which stated that participants had noted with appreciation that several NGOs had provided background information to treaty bodies whenever State reports had been considered, that the material provided had been considered valuable and that all the relevant documentation of the treaty bodies should be disseminated as widely as possible. It was also stated that each committee should decide in the light of its own circumstances the extent and the form of the cooperation with NGOs. The Committee's position should on no account be more restrictive than that of the chairpersons of the treaty bodies as stated in their report, which had been adopted by the General Assembly. He agreed with Mr. Ferrero Costa that the question of sources should be discussed at the following session. All necessary steps should be taken to persuade States parties which had submitted a report but failed to send a representative to the Committee to ensure that a representative was present in order to maintain an effective dialogue. In the last resort, however, the Committee should consider reports in the absence of government representatives.

25. Mr. ABOUL-NASR commended Mr. Lamptey's proposals as a contribution to solving the problem of long overdue reports. He himself had a suggestion to make that would circumvent the legal and procedural problems raised by various members, as well as the problem of drawing on external sources of information. If the Committee deemed a report to be unacceptably overdue, it might appoint a rapporteur to examine previous reports of that State and the relevant Committee discussions, particularly questions which had gone unanswered. The State could then be informed that such a review had been made and invited to submit a new report on a given date, for instance before the subsequent session. If it complied, the Committee would proceed as usual; if not, the Committee could hear and discuss the rapporteur's report and submit its comments and conclusions, explaining the procedure adopted, to the General Assembly in its own report. The procedure he suggested would have the merit of drawing attention to the situation of that particular State party - in a way that the mere submission of a list of overdue reports did not - and thus putting some form of pressure on it to comply with its reporting obligations.

26. Mr. FERRERO COSTA endorsed Mr. Aboul-Nasr's suggestion, which merited further elaboration. Article 9, paragraph 1, of the Convention indeed provided a precedent for such a procedure since, in addition to stipulating the frequency of reporting, it stated that a report should be submitted "whenever the Committee so requests". It also provided that the Committee

might request further information from the States parties. There were, therefore, no legal impediments, and he hoped that the matter could be discussed and settled at the current session.

27. Mr. WOLFRUM also supported Mr. Aboul-Nasr's suggestion, whereby the Committee could take action without any legal implications. It should be discussed at the current session and there should be no problem with its immediate application.

28. Mr. YUTZIS concurred with previous speakers in what was a major step forward in determining a procedure for dealing with the question of overdue reports. He agreed that a basis for action was provided by article 9, paragraph 1. It remained to formulate the proposal in more specific terms so that it could be discussed at the current session and put into immediate effect.

29. Mr. VIDAS agreed that the proposal was an interesting one and should be further discussed, with all its implications, in order to determine the specific procedure to be followed. He drew attention to document CERD/C/212, from which it emerged that there were some 25 States parties from which no reports had been received for over five years. In its discussion, the Committee would need to determine which States would be subject to the proposed procedure, and in which order.

30. Mr. GARVALOV drew attention to Rule 65 of the Committee's rules of procedure, which stipulated the exact procedure to be followed in the event of a request for an additional report or further information from a State party under the provisions of article 9, paragraph 1, of the Convention.

31. The CHAIRMAN said there seemed to be a consensus that the list on page 3 of document CERD/C/212 should be used to determine which States should be regarded as being in default where submission of reports was concerned. He suggested that a small working group, consisting of Mr. Banton, Mr. Vidas, Mr. Aboul-Nasr, Mr. Lamptey, and Mr. Yutzis, should be set up to prepare a revised proposal in the light of the discussion. In view of the time constraints, the group should meet, if possible, before the end of the week.

It was so agreed.

32. Mr. YUTZIS asked whether a decision had been taken to include the subject of information sources on the agenda of the Committee's next session.

33. The CHAIRMAN said it was of course for the Committee to decide what material it wished to use. He drew attention to paragraph 40 of the report of chairpersons of treaty bodies (A/45/636), which suggested that any relevant documentation of the General Assembly, the Security Council and other United Nations organs should be made available to the treaty bodies when deemed pertinent to their activities. In his own view, it was the question of documentation provided by NGOs that was somewhat contentious, since some NGOs were more responsible than others. On the other hand, material from such sources was often a useful background to the reports of States parties, which could on occasion be self-serving and provide very little information.

34. The question of information sources would thus be included on the agenda for the Committee's next session, and the Secretariat would be requested to prepare a paper listing any documents which made reference to the subject and also indicating the practice followed by other treaty bodies with respect to information sources.

It was so agreed.

35. The CHAIRMAN invited comments on the plan of activities for the second half of the Second Decade to Combat Racism and Racial Discrimination, as set out in paragraph 46 of document A/45/443. He drew the Committee's attention to General Assembly resolution 45/105, which also dealt with the question of the Second Decade.

36. Mr. LAMPTEY suggested that members should also take into account decision 1 (XXXIV) adopted by the Committee at its thirty-fourth session, which put forward a number of suggestions for activities that might be undertaken during the Second Decade.

37. The CHAIRMAN suggested that the Committee should adjourn to enable members to study the relevant documents.

The meeting was suspended at 11.40 a.m. and resumed at 12.05 p.m.

38. Mr. WOLFRUM said he understood from the Secretariat that it was likely that the Committee would have only some four or five reports before it at its next session, fewer than ever before. He suggested that it could usefully take up the question of States parties with overdue reports, as proposed by Mr. Aboul-Nasr.

39. The Committee should take the 12 States listed on pages 3 and 4 of document CERD/C/212, and appoint a country rapporteur, on a voluntary basis, for each. A letter would then be sent to the Governments of the States parties concerned, informing them that the Committee would be reopening discussion on the reports they had originally submitted and would be reporting thereon to the General Assembly. The letter would urge those States to send in a new report or to supply additional information, so as to provide a basis for discussion. He himself, together with Mr. Ferrero Costa, would volunteer to draft the letter.

It was so decided.

40. The CHAIRMAN asked for volunteers to serve as country rapporteurs for the countries concerned. He took it that the Committee agreed that Liberia, Lebanon and Guyana should be omitted from the list.

41. Mr. WOLFRUM volunteered to act as rapporteur for Fiji and Togo, Mr. LAMPTEY for Sierra Leone, Guinea and Gambia, Mr. de GOUTTES for Côte d'Ivoire, Mrs. SADIQ ALI for Uganda, Mr. VIDAS for Swaziland, Mr. BANTON for Zaire, Mr. YUTZIS for Gabon, Mr. FERRERO COSTA for Belgium, and Mr. SHERIFIS for the Bahamas.

It was so agreed.

42. The CHAIRMAN said he took it that in the light of the decision just taken, the earlier decision that members should make informal, personal contact with representatives of States parties with overdue reports was now rescinded.

It was so agreed.

43. Mr. ABOUL-NASR said he realized that the situation in both Liberia and Lebanon was difficult; however, the Committee could not simply omit them from the list without giving a reason. It would not be appropriate to indicate, in the Committee's report to the General Assembly, its view that the situation in those countries was too unstable. Would it not be preferable to make approaches to those countries, even though it was unlikely that any reply would be received?

44. The CHAIRMAN pointed out that Liberia and Guyana had been omitted because the Committee had never received any reports from those countries. There remained only the question of Lebanon.

45. Mr. WOLFRUM volunteered to act as country rapporteur for Lebanon.

46. Mr. RESHETOV noted that many of the countries with overdue reports had also failed to pay their contributions. He suggested that the letter might also raise the matter of overdue contributions.

47. Mr. ABOUL-NASR, supported by Mr. FERRERO COSTA, Mr. WOLFRUM, and Mr. BANTON, opposed the idea of associating the question of reports with the question of contributions.

48. The CHAIRMAN thanked the volunteers and invited members to comment on paragraphs 46 and 47 of document A/45/443, which listed a number of activities to be undertaken between 1990 and 1993, and on the Committee's decision 1 (XXXIV), on the Second Decade to Combat Racism and Racial Discrimination.

49. Mr. LECHUGA HEVIA suggested that the issue of the failure of States parties to submit reports and that of their failure to pay their contributions could be taken up at the special meeting of States parties to assess the experience gained in the implementation of the Convention referred to in paragraph 6 of decision 1 (XXXIV).

50. Mr. ABOUL-NASR observed that the two points mentioned by Mr. Lechuga Hevia were both negative in character. The real purpose of the special meeting of States parties would be to discuss the difficulties encountered in the Committee's dialogue with States parties and also the Committee's achievements in encouraging implementation of the Convention - for instance, in convincing States parties to amend their Constitutions so as to prohibit racial discrimination. The Committee might need more time to reflect on the matter.

51. Mr. LECHUGA HEVIA explained that his intention had been that the two points he had mentioned should be additional to the other points to be dealt with at the special meeting.

52. Mr. VIDAS suggested that the special meeting should take place in 1992 to allow enough time in which to prepare for it. The deliberations of the special meeting might also prove helpful in preparing for the World Conference on Human Rights in 1993. The matter would need to be reconsidered at the Committee's next session.

53. The CHAIRMAN pointed out that the States parties were due to meet in January 1992 to elect or to re-elect some members of the Committee. Perhaps the States parties could be requested to discuss the issues raised at their January 1992 meeting instead of holding a special meeting.

54. Mr. LAMPTEY agreed with the views expressed by Mr. Vidas and suggested that the one-day regular meeting of States parties due to be held in January 1992 should be expanded into a special meeting of two or three days' duration at which all the matters raised could be discussed. There would then be no need to hold a special meeting later in the year. The question should be considered by the Committee at its next session. Although it was not the Committee's task to organize the meetings of States parties, it could provide them with ideas. He pointed out that some of the Committee's suggestions were not included in the Secretary-General's list of activities contained in document A/45/443 and that, in any case, implementation of the activities would depend on the availability of resources.

55. The CHAIRMAN wondered whether a connection could be established between the seminar to assess experience gained in the implementation of the Convention mentioned in paragraph 46 (f) of document A/45/443 and the special meeting of States parties.

56. Mr. de GOUTTES agreed with Mr. Lechuga Hevia that the States parties should be requested to consider the Committee's activities at their next meeting. Action would then have been taken on two fronts - by the Committee itself, and subsequently by the States parties at their meeting.

57. Mr. SHERIFIS supported the idea that the meeting of States parties scheduled for January 1992 should be expanded to consider an enlarged agenda. However, the Committee should prepare a list of items which it would like the States parties to deal with and should make some specific recommendations. The seminar referred to in paragraph 46 (f) of document A/45/443 was an entirely different matter and should not be associated with the meeting of States parties scheduled for 1992.

58. Mr. LAMPTEY agreed. On the one hand, there was the meeting of States parties, which could be expanded, and on the other, there was the seminar, at which the Committee would evaluate its own work.

59. The CHAIRMAN also agreed that there should be no connection between the seminar and any recommendations that the Committee might make to the States parties.

60. Mr. ABOUL-NASR asked what the position was with regard to the organization of the seminar.

61. The CHAIRMAN reminded members that it was to have been held in connection with the spring session which the Committee had wanted to hold in New York in 1990 but which had had to be cancelled owing to lack of funds. The seminar was still included in the list of activities to be undertaken, but there might not be enough resources to finance it.

62. Mr. SHERIFIS suggested that the representative of the Secretary-General should be requested to provide some information on the matter. It would also be necessary to know as soon as possible whether the Committee's next session would be of two or three weeks' duration. It was essential for members such as himself, whose work was subject to a very strict timetable, to know the exact dates well in advance.

63. Mr. HOUSHMAND (Representative of the Secretary-General), replying to Mr. Aboul-Nasr's question about the seminar, said that the item had been included among the activities scheduled for the Second Decade to Combat Racism and Racial Discrimination at the suggestion of the Committee itself. The General Assembly and the Commission on Human Rights were aware of the financial situation and of the resources available to the Centre for Human Rights for the implementation of all the activities listed. The seminar was not the only activity whose implementation had been delayed through lack of Funds. The activities listed were being implemented as and when resources became available. Page 17 of document A/45/443 contained a section on a Trust Fund for the Programme for the Decade, which members might wish to consult. One seminar, on the political, historical, economic, social and cultural factors contributing to racism and racial discrimination and apartheid, had already been held.

64. Another question had been asked about the duration of the Committee's next session. At present, it was scheduled to last three weeks, but much would depend on the amount of work to be done at the session. So far, no more than five reports were available for consideration, although the Committee would also have to consider the item on the Second Decade to Combat Racism and Racial Discrimination and documents submitted under article 15 of the Convention, and to adopt its report to the General Assembly. With the Committee's decision to include consideration of the situation with regard to the implementation of the Convention in States parties which had not submitted reports during the past 10-12 years, the Committee's workload would probably cover three weeks of meetings. The actual decision would be taken when the agenda and timetable for the session were drawn up. The amount of resources available for the session would be another factor. That should be known by mid-May. In any case, members of the Committee would be informed as soon as possible.

65. Mr. FERRERO COSTA stressed how important it was for members to know as soon as possible whether the next session would be of a two or three weeks' duration.

66. The CHAIRMAN said he had noted the suggestion that the Committee should submit specific recommendations regarding the implementation of its mandate to the meeting of States parties in 1992. It would therefore be necessary to determine what kind of recommendations the Committee wished to make. More information and a further discussion of the matter would be required.

67. Mr. HOUSHMAND (Representative of the Secretary-General) pointed out that any recommendation by the Committee that the meeting of States parties should be extended beyond its normal duration of one day would have financial implications and would therefore need the approval of the General Assembly.

The meeting rose at 1 p.m.

CERD/C/SR.905
20 March 1991

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Thirty-ninth session

SUMMARY RECORD OF THE 905th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 15 March 1991, at 10 a.m.

Chairman: Mr. SHAHI

later: Mr. LAMPTEY

CONTENTS

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

Ninth and tenth periodic reports of Canada

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)*

Ninth and tenth periodic reports of Canada (CERD/C/159/Add.3 and CERD/C/185/Add.3)

At the invitation of the Chairman, Mr. Shannon, Mr. Dubois, Mr. Low, Mr. Kessel, Mr. Marantz, Mr. Lapierre, Mr. Gauld, Mrs. Whitaker and Mr. Lafleur (Canada) took seats at the Committee table.

1. Mr. SHANNON (Canada), introducing the ninth and tenth periodic reports of Canada (CERD/C/159/Add.3 and CERD/C/185/Add.3), said that since responsibility for implementing the Convention was shared between the federal, provincial and territorial governments, Canada's reports accounted for the legislation and programmes of all governments in the country. A brief overview of the multicultural reality of Canadian society based on the results of the 1986 census might help to explain Canada's commitment to measures which enhanced its multicultural heritage and promoted intercultural acceptance and understanding.

2. Before the arrival of Europeans, the aboriginal peoples had been the sole inhabitants of the country, but over the years continuous immigration had contributed to its diversity. Today, while the majority of Canadians were still of British or French origin, approximately 4 per cent had aboriginal origins and a third of the population had origins other than British or French; the latter formed the majority in Manitoba, Saskatchewan, Alberta and British Columbia. In recent decades there had been a shift in the sources of immigration, and by the 1980s, two out of three immigrants had been from Africa, Asia, the Caribbean or Latin America. As a result, measures to accommodate cultural differences and enhance intercultural understanding had taken on increased importance.

3. The term "visible minorities" was used in Canada to describe people, other than aboriginal people, who were identifiable by virtue of their skin colour and might experience discrimination on that basis. Visible minorities accounted for about 6 per cent of the population, and close to one fifth of the population in major Canadian cities. It was estimated that by the year 2000, visible-minority Canadians and aboriginal peoples would together account for 13 per cent of the total population and possibly one third of the population of the major cities. The increasing diversity precluded indifference to the presence of racial discrimination in Canadian society. Although it was acknowledged that a small minority of extremists found it all too easy to associate visibly identifiable groups with current social, economic and other problems, Canada's position was clear. Racism and racial discrimination conflicted with its ideals, laws and the image of the kind of country Canadians wished to build, and important steps had been taken to create a society reflecting the goals of the Convention.

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* Resumed from the 902nd meeting.

4. The Canadian Charter of Rights and Freedoms, enshrined in the Constitution in 1982, protected essential human rights and fundamental freedoms. Section 15 of the Charter guaranteed the right to equality without discrimination, including discrimination on any grounds including race, national or ethnic origin, colour and religion. The Charter also provided for positive measures to improve the conditions of disadvantage experienced by individuals or groups; section 15 thus provided a basis for government action to overcome discrimination of all kinds. Section 27 required that the whole of the Charter should be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians. Both sections 15 and 27 had been invoked by the Supreme Court of Canada in three recent decisions which had upheld prohibitions on the dissemination of hate propaganda. The Court had also taken into account Canada's international human rights commitments, including the Convention.

5. The unique, federally-funded Court Challenges Programme, which had been renewed for a further five years, provided financial assistance to groups and individuals in legal challenges to laws or government programmes which they believed to be contrary to the equality or language-rights provisions of the Constitution. Federal, provincial or territorial human rights legislation also protected everyone in Canada against discrimination by non-governmental parties, through the establishment of independent commissions to investigate, conciliate and, if necessary, litigate complaints of discrimination in both the public and private sectors. Victims of racial discrimination thus had access to a full range of remedies. Widespread public information programmes were also conducted by human rights commissions and governments to ensure that all members of the community were aware of those measures.

6. Recognizing that anti-discrimination laws did not suffice, Governments had taken numerous other measures. The federal Employment Equity Act aimed to ensure that women, disabled persons, aboriginal people and visible minorities were equitably represented in employment. Annual reports by employers were submitted to the Canadian Human Rights Commission, which could take action under the Canadian Human Rights Act to deal with any indication of discrimination. The same groups also benefited from federal employment equity programmes throughout the public service. Similar measures were at the forefront of policy development in the provinces and territories, and laws and programmes had been adopted by several governments.

7. Another significant measure for the active promotion of equality was the Canadian Multiculturalism Act, which set out the Government's multiculturalism policy and required all federal departments and agencies to ensure that every Canadian could participate fully and without discrimination in defining and building Canada's future. The new Broadcasting Act was an example of the implementation of that policy by federal institutions, specifying as it did that the broadcasting system should, through programming and employment opportunities, serve the needs and interests and reflect the circumstances and aspirations of Canadians, including equal rights, the linguistic duality and multicultural nature of Canadian society, and the special place of aboriginal peoples within that society. The Canadian Multiculturalism Act also provided a legislative basis for financial and technical assistance to non-governmental organizations and individuals for activities which furthered the objectives of

the Act. There were three assistance programmes, covering race relations and cross-cultural understanding, heritage cultures and languages, and community support and participation.

8. A plan of action to eliminate racial discrimination in Canada had been published in March 1989. A French and English copy of a document entitled "Eliminating racial discrimination in Canada", which set out the plan in detail, and a copy of a document entitled "Working together towards equality", describing federal action to give effect to the plan during its first year, would be left with the Committee. It would be noted that private institutions were being actively involved in the fight against racial discrimination.

9. In 1989 for the first time, 21 March, the International Day for the Elimination of Racial Discrimination, had been the focus of a major national public education campaign; the campaign had since been broadened, and other Governments in Canada were also undertaking activities to mark the Day. A copy in English and French of the kit used to promote participation in 21 March activities would be provided to Committee members.

10. The Canadian Parliament had recently passed legislation to establish and endow a Canadian Race Relations Foundation to foster racial harmony and help eliminate racism. With its $24 million endowment, the Foundation would carry out research, act as a clearing-house for information, develop training programmes and manuals, establish public awareness programmes, and work with business, labour and public institutions.

11. Copies of the first and second annual reports under the Canadian Multiculturalism Act, and copies of a Guide to the Canadian Multiculturalism Act were at the disposal of the Committee. Many of the federal initiatives were reflected in similar developments in the provinces and territories, including amendments to strengthen human rights legislation and expand the educational and enforcement roles of human rights commissions, as well as introducing or broadening multiculturalism and race relations laws, policies and programmes. For instance, Quebec had introduced a new policy emphasizing full participation and harmonious inter-group relations, and had undertaken to increase the representation of cultural communities in its public service. Ontario had established a government-wide Multiculturalism Strategy, a Race Relations Directorate and a funding programme for community-based race relations projects, and would be introducing employment equity legislation for the public and private sectors in the near future. British Columbia, Manitoba and New Brunswick had adopted formal multiculturalism policies, Nova Scotia had recently adopted multiculturalism legislation, Saskatchewan had announced the renewal of existing multiculturalism legislation, and Alberta had introduced a public education campaign entitled "One Heart, Many Colours". Increasing attention was being given to cultural diversity within school systems. The Department of Education in Newfoundland had established a Multicultural Advisory Committee to draft a multicultural educational policy; the British Columbia Department of Education had recently commenced an examination of multiculturalism in education, and the Government of the Yukon had recently passed a new Education Act giving attention to cultural diversity and to the Canadian

Charter of Rights and Freedoms. In addition, most of the major Canadian cities had established policies, advisory bodies and programmes to fight racial discrimination.

12. With regard to aboriginal peoples, amendments to the Indian Act had been described in the periodic reports. An evaluation study recently carried out jointly by the federal Government and several aboriginal organizations would be provided to the Committee in due course. Recent initiatives included the announcement in September 1990 of a government strategy to preserve the special place of indigenous peoples, based on the aboriginal and treaty rights contained in the Constitution. The government strategy was based on the acceleration of land claims settlements, the improvement of economic and social conditions on the reserves, legislative changes regarding the relationship between aboriginal peoples and Governments, and concerns of Canada's aboriginal peoples in contemporary life. In accordance with those aims, the federal Government had made a number of announcements ranging from major changes in land claims processes to proposals for the improvement of living conditions on Indian reserves. The situation at Oka in the summer of 1990 had been one of several experiences that had increased awareness of the need to resolve important indigenous issues. The events involving Mohawk Indians at Oka-Kanesatake and Kahnawake, Quebec, had a long and complex history, as he had outlined at a meeting of the United Nations Working Group on Indigenous Populations in August 1990. The matter had been dealt with in detail during the presentation of Canada's second report to the United Nations Human Rights Committee, and he referred the Committee to Canada's presentation at that time. It had been a difficult experience for all concerned. Agreement had recently been reached on a framework agenda to guide negotiations on land issues, economic development and self-government, and it had now been referred to the Mohawk community of Kanesatake for ratification.

13. In September 1988, the federal Government had agreed to apologize and provide redress to Canadians of Japanese ancestry for injustices they had suffered in the Second World War. Most of the claims for financial compensation under the agreement had now been completed. In November 1990, the Prime Minister had announced that the Government would also extend a formal apology to other Canadian ethno-cultural communities whose members had suffered similar mistreatment by past Canadian governments and would begin discussions to determine how best to symbolize Canada's recognition of that discrimination.

14. Canada's governments were also facing up to current issues of discrimination in the justice system. The Royal Commission of Inquiry into the case of Donald Marshall Jr. had made 82 recommendations; documents describing the implementation of the recommendations would be made available to the Committee. In Alberta and Manitoba, inquiries and task forces were currently examining treatment of aboriginal peoples and minorities by the justice system, and were expected to provide further recommendations in that area. The federal Criminal Code was also under examination by the Law Reform Commission to assess its application to aboriginal persons and members of cultural minorities. The Commission was to report in June 1991.

15. A joint federal/provincial initiative was under way to create a Canadian Police Race Relations Centre which would collect, develop and disseminate

resource materials to advance police-community relations. Ontario had taken the lead in evaluating cross-cultural training for police, and the resulting information would be used to develop and implement cross-cultural training programmes for police officers throughout Canada. A special recruiting team had been established to increase the representation of aboriginal people and visible minorities in the Royal Canadian Mounted Police, and other police forces had taken similar initiatives. Under Ontario's new Police Services Act, employment equity requirements for the provincial and municipal police forces had been established along with a mandatory province-wide complaints system. Quebec authorities were implementing recommendations of a report of the Quebec Human Rights Commission on police-minority relations. Throughout Canada, a start had been made on developing educational programmes to encourage sensitivity to cultural diversity and minority concerns among judges and lawyers.

16. To sum up, there was no complacency about racial discrimination in Canada and in confronting complex and difficult issues in a multicultural society. Action was being taken, and the Convention and the contributions of the Committee would continue to be a source of guidance for the development of Canadian policy.

17. Mr. YUTZIS, country rapporteur, thanked the representative of Canada for his Government's continuing dialogue with the Committee, for the wealth of information provided and for the significant efforts made to comply with the Convention. Although the Committee's function was not to sit as a tribunal, handing down judgements, it had to fulfil its mandate of monitoring the implementation of the Convention on the basis of the periodic reports submitted by States parties. Any human endeavour naturally left room for improvement; that applied both to States parties and to the Committee itself. His analysis would be divided into three parts: general issues, specific consideration of the major question of the aboriginal people in Canada, and an examination of the situation which had arisen in Oka in the summer of 1990.

18. The references to racial tension and discrimination in paragraphs 123 and 163 of the ninth report showed Canada's commendable recognition of the existence of racial problems. In connection with article 1 of the Convention, he welcomed the information given in paragraph 20 of the ninth report and paragraph 9 of the tenth report on the Canadian Multiculturalism Act. He wished to know how many institutions and/or governments had actually implemented its provisions and, where they had not been implemented, what were the reasons for failure to do so.

19. The Employment Equity Act represented a very significant step forward. With reference to paragraph 32 of the ninth report and paragraph 18 of the tenth report, he asked whether there were any employers who had not complied with the provisions of the Act and, in order to identify obstacles to implementation, requested figures concerning its implementation, such as those emerging from the reports referred to in paragraph 18 of the tenth report.

20. Paragraph 28 of the ninth report referred to measures adopted to exempt members of visible-minority groups from certain provisions of the Public Service Employment Act in order to facilitate their appointment to the public service. Did that imply that such persons did not meet the educational or

skills requirements of the public service, and hence entail what might be termed a levelling-down of recruitment criteria? The necessary conditions should perhaps be created to ensure that members of those groups attained the necessary standard in order to obviate the need for such exemptions.

21. Referring to paragraphs 35-39 of the ninth report and paragraph 23 of the tenth report in connection with article 3 of the Convention, he stressed the need to continue to take practical measures to exert pressure on South Africa.

22. Drawing attention to paragraphs 41-44 of the ninth report and paragraph 24 of the tenth report, in connection with article 4 of the Convention, he asked whether there had been any further ruling in the cases in question, and, if so, what had been the verdict. The ruling of the Ontario Court of Appeal referred to in paragraph 138 of the ninth report against an individual who had printed pamphlets claiming that the Holocaust was a lie was a very important one in terms of compliance with the Convention.

23. An interesting case reported by the Canadian Council of Churches had come to his attention. If accurate, it concerned article 4 (c) and article 2, paragraph 1 (a)-(c). In 1987, a group of Sikhs had allegedly attempted to enter Canada; emergency procedures had been invoked and they had been turned back. A similar situation had reportedly arisen later in the same year involving a group of Poles, but they had apparently not received the same treatment. He asked why, if the report was correct, the Sikhs had been rejected, why emergency procedures had been invoked and why the Polish group had been treated differently. He would also welcome updated information on the Immigrant Access Service referred to in paragraph 92 of the ninth report and paragraph 45 of the tenth report, in connection with employment, health, family and other services.

24. The question of aboriginal rights had to be viewed in the light of the different perceptions of the aboriginal people that had prevailed at different periods. The initial, colonialist policy of both France and Britain had been subjection and control, followed by protection and preservation. As the native peoples had gradually ceased to be economically, militarily or politically relevant to the European immigrants who had come to form the majority of the population, that policy had given way to one of assimilation of native peoples into mainstream Canadian society, with a corresponding decrease in expenditure on programmes designed specifically to benefit them.

25. In the late 1960s and early 1970s, that perception had in turn been rejected in favour of a new perception of aboriginal peoples as ethnic minorities, forming an integral part of the cultural mosaic of Canada. The policy was now to help native peoples take their rightful place alongside other cultural minority groups. It entailed measures to ensure equality before the law, employment opportunities, and full participation in political and economic life, as outlined in paragraphs 76, 132, 199, 203 and 204 of the ninth report (CERD/C/159/Add.3).

26. A more recent trend had been to perceive ethnic minorities as different "nations", each sharing a common language, culture and history, and identifying itself as belonging to a common political entity. Although that approach had not yet been adopted officially by the Canadian Government, it

was clearly articulated in the Penner report of 1983 entitled "Indian self-government in Canada". In that report, Canada was seen as a single, sovereign State consisting of a confederation of several "nations". From that viewpoint, the ultimate aim should be recognition and acceptance of those "nations", and of their right to administer their own lands, while at the same time remaining within the Canadian federation.

27. Such an approach, which was a controversial one, claimed that aboriginal rights included the title to land occupied and used since time immemorial. It believed that such rights should not be abrogated by any treaty or agreement made with the Canadian Government but should rather be entrenched in the Constitution; any settlement of land claims should not imply abandonment of such rights. To some extent, those rights were given recognition in paragraphs 23, 24 and 25 of the ninth report.

28. Although some aboriginal people in Canada, particularly in the large cities, viewed themselves and their rights in the context of ethnic minorities, the majority viewed themselves as "nations" and were struggling to obtain recognition as such. Although both reports were highly positive in terms of what had been achieved for the benefit of ethnic minorities, they did not satisfy the aspirations of those peoples who saw themselves as belonging to a "nation" and whose aspirations were inextricably bound up with their relationship to the land. Such peoples could not see the distinction between the current ethnic minority policy and the earlier policy of full assimilation.

29. The aboriginal peoples in British Columbia, the Yukon and North-West Territories had never made any agreements or treaties with the Canadian Government, and had never surrendered any lands or rights. As they saw it, the amount of land over which they had claims comprised some two thirds of Canada's land mass. In the case of British Columbia, the matter was more complicated because the provincial government had steadfastly refused to acknowledge the existence of aboriginal rights of any kind. There had recently been a major court case in that province involving claims by the Gitksan-Wet'suwet'en people; a ruling was expected shortly. Judgement in a similar case (the "Sparrow case") had been settled favourably by the court with important implications for aboriginal rights elsewhere in Canada.

30. With reference to paragraph 23 of the ninth report, what other measures had been adopted to protect and advance the special position of the aboriginal peoples in Canadian society? What was being done to define aboriginal rights under the Canadian Constitution? Would the recent failure of the Meech Lake Accord in any way jeopardize such rights? With reference to paragraph 24, were there any plans for pursuing the constitutional process beyond the position outlined in paragraph 13 of the tenth report?

31. The concept of self-government was of key importance for aboriginal peoples. In the report, the term "self-government" seemed to be understood as either the transfer of administrative powers from the federal bureaucracy responsible for executing the Indian Act to local Indian Band bureaucracies, or as municipal-style government, such as that referred to in paragraph 27 of the ninth report. The overwhelming majority of aboriginal people rejected that model, particularly since municipal government in Canada was a creation

of provincial governments and thus subject to provincial veto. What other approaches was the Government considering taking? What kinds of processes existed to allow for dialogue?

32. The Indian Act, mentioned in paragraph 26 of the ninth report, had been designed to amend a policy which had discriminated against Indian women, in the sense that if they married outside the tribe, they lost their claim to Indian status, whereas men in the same situation were not affected. Despite the advance achieved by the Act, the problem remained that the Government still retained the power to decide who was or was not to be regarded as an Indian.

33. It was clear from paragraphs 24, 25 and 75-77 of the ninth report that a major source of injustice for aboriginal people was the slowness of the land claims negotiation process; ways should be found of speeding up that process. Did the new arrangements for consultation described in paragraph 75 imply that the Government of British Columbia was willing to negotiate with the native population concerning land claims? And how did the efforts to promote greater economic and social autonomy outlined in paragraph 76 square with the Government's refusal to negotiate land and fishing rights, so that native peoples could retain a viable economy?

34. A year before, there had been a significant incident when a dispute had arisen between the Mohawks of Kanesatake and the Quebec provincial government over a plot of land bought by the municipality for use as a golf course. The Mohawks had erected barricades preventing access to the land, and eventually troops had been sent in by the Canadian Government to dismantle the barricades. There had been a distressing confrontation when a group of elderly Mohawks and Mohawk children had been attacked by an angry mob who had thrown stones and shouted racist slogans. It would appear that during the incident the Department of Indian Affairs, which had a fiduciary responsibility for all aboriginals in Canada, had kept a very low profile. Many church and political leaders had expressed strong support for the native cause, even though they had some reservations about the tactics the Mohawks had employed. It was important to analyse the whole question. One positive outcome of the incident was that the government of British Columbia, which had systematically refused to recognize aboriginal claims or to negotiate with native peoples, had now agreed, together with the Federal Government, to enter into negotiations to settle some of the claims. That was an indication of significant progress.

35. The incident had a number of human rights implications: for example, Quebec's Human Rights Commission had argued that the police attack on the barricades had been illegal. So far, there did not seem to have been any significant change in those areas of government policy which most concerned aboriginal people, notably that negotiated land settlements must be at the expense of aboriginal rights, and that any agreements reached on self-government would not be guaranteed under the Constitution. The argument of the Federal Government was that until Quebec had signed the Canadian Constitution, no definition of aboriginal rights would be possible, despite the fact that certain changes had already been effected with regard to the rights of aboriginal women. Another cause for widespread concern among

aboriginal peoples in Canada was the severe reduction in funding for native radio, television and newspapers. In addition, it was important for Quebec to offer an agenda for discussions of the Kanesatake land dispute.

36. It had been both a challenge and a source of great satisfaction to him to act as country rapporteur for the ninth and tenth periodic reports of Canada, since the importance attached by that country to implementation of human rights instruments in general, and the Convention in particular was well known. He expressed gratitude to the Canadian Government for its regularity in submitting reports and for the interest it had shown in pursing a dialogue with the Committee. Canada was a model where reporting was concerned.

Mr. Lamptey took the Chair.

37. Mr. SHERIFIS said Canada had always done its best to fulfil its obligations under the Convention both in letter and in spirit, and its relations with the Committee had been exemplary. He appreciated the fact that Canada had sent such a large and high-level delegation to represent it in the Committee.

38. Despite its admirable efforts to uphold human rights standards, he noted that Canada had not yet made the declaration provided for under article 14 of the Convention. Was the Canadian Government considering making that declaration, and if not, were there any specific reasons?

39. In connection with article 5 of the Convention, he would like to know whether there were any restrictions on freedom of movement from one province to another, or any restrictions on the right to settle and acquire property in another province.

40. Reference was made in paragraph 4 of the ninth report to the 1987 Constitutional Accord, which had fallen through the previous June owing to the fact that it had not been ratified within the required three-year period. That Accord would have recognized Canada's linguistic duality and Quebec's place within Canada as a distinct society. Were there any repercussions for Canada as a whole resulting from the failure of the Accord, and were any measures being envisaged by the Government to overcome any consequent problems?

41. Mr. WOLFRUM expressed appreciation for the copious information contained in Canada's two reports and for the Canadian representative's valuable introduction. In July 1988, the Multiculturalism Act had been adopted to preserve and enhance the multicultural heritage of Canadians, while seeking to achieve the equality of all Canadians in economic, social, cultural and public life. That was an admirable piece of legislation, in full conformity with the provisions of article 1, paragraph 4, of the Convention; it would, however, be helpful for the Committee to have some information on the implementation of the Act, as well as on the membership codes to be submitted on the basis of the revised Indian Act of 1985, referred to in the ninth report.

42. He welcomed the amendments to the Indian Act of 1985 but disagreed with the analysis made by Mr. Yutzis regarding the discrimination which had existed between women and men. Full tribute seemed to have been paid to the decision

taken by the Human Rights Committee in the Lovelace case, which had focused on that very point. Could the Canadian delegation confirm that interpretation?

43. An explanation of what was meant by the words "achieving a constitutional amendment on Aboriginal self-government" in paragraph 13 of the tenth report would be appreciated.

44. Mr. Sherifis had already mentioned the meeting of the 10 Provincial Prime Ministers and the Prime Minister of Canada and the agreement they had signed in the summer of 1990. Two of the issues dealt with might be of interest to the Committee. He would like to know what was meant by the words "a distinct society clause complements but does not override the Canadian Charter of Rights and Freedoms or adversely affect minorities" in the letter of clarification, and what the position was with regard to the Parliamentary Commission set up to look into the "Canada clause", which would redefine the Canadian identity. Moreover, some information on the transformation of the Senate into a different body could perhaps be included in the next periodic report.

45. Lastly, he noted that the Canadian Human Rights Act contained provisions for the establishment of a human rights tribunal. Some further information on its function and composition and on the manner in which it differed from the ordinary courts would be welcome.

46. Mr. de GOUTTES thanked the Canadian delegation for its comprehensive and very frank reports, in which it had recognized the existence of certain problems relating to discrimination. The tenth report showed that judicial and police efforts were being made to eliminate all traces of discrimination against indigenous peoples, but it also contained a number of indications that indigenous peoples were not adequately integrated into Canadian society. Those indications included the level of indigenous youth involvement in ethnic gang-related crime, the need to curb alcohol and drug abuse among indigenous people, the efforts to make justice more accessible to indigenous people, the issue of race relations in the courts, the inquiry into relations between police forces and visible and ethnic minorities ordered in Quebec, the high percentage of complaints of discrimination received by the Nova Scotia Human Rights Commission accounted for by complaints based on discrimination on the ground of race, colour or ethnic or national origin, and the Task Force on Race Relations and Policing commissioned in Ontario. Those kinds of situation were, of course, to be found wherever problems associated with minorities occurred in the world. Canada had set them forth frankly, and it was to be hoped that its next periodic report would contain information on the measures taken to deal with them.

47. Mr. RESHETOV said that Canada's ninth and tenth periodic reports were excellent; they had been carefully prepared and provided much interesting information, including information on the relationship between the Federal and Provincial Governments, on judgements handed down by the courts in cases involving racial discrimination, and on the situation of the indigenous peoples. Moreover, the Canadian Government had sent a large delegation to represent it at the session. Nevertheless, he had some reservations regarding the usefulness of the information given on the formation of Canada as a

country. Although such information might be of historical interest, it must be borne in mind that the Committee was essentially concerned with the application of existing international law to current problems.

48. In his introductory statement, the representative of Canada had mentioned the negative role played by extremist groups. Canada's desire to protect itself from efforts to destroy its unity were perfectly understandable, but in that matter, too, international norms had to be taken into account. He wondered, for example, whether the Constitution of Canada or other legislation contained any provision for the exercise of the very complex right to self-determination, including arrangements for its implementation through a referendum.

49. The situation of certain indigenous groups in Canada had been a source of concern in the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The Canadian Government's response had been highly praised, and other States facing problems with United Nations human rights bodies would do well to follow Canada's example. Nevertheless, he would like the Canadian delegation to supply some information on the public image of indigenous peoples. Were indigenous communities looked upon as "museum pieces", or were they viewed as integral parts of Canadian society making their contribution to the solution of national problems? Unfortunately, in some reports States parties adopted a paternalistic approach to indigenous peoples, forgetting that they had been the original occupants of the country.

50. Mrs. SADIQ ALI thanked the Canadian delegation for its forthright report and Mr. Yutzis for his in-depth analysis. She was particularly pleased to note that the Canadian Government had provided demographic data, which the Committee had recently had difficulty in obtaining from other States parties. The information on racist propaganda given in Canada's report was also appreciated, since certain other States parties had shown reluctance to supply it.

51. She had three points to raise concerning the indigenous populations. First, in Saskatchewan the uranium-mining industry had ignored the indigenous peoples, who constituted over 70 per cent of the population. Promises of employment had largely not been kept, and the ecological and social effects of mining had been disregarded. Second, on the west coast, international timber companies claimed most of the valuable trees and there was severe pollution. In spite of a court ruling of 1985, the Canadian Government had not negotiated with the Haida people. What was the reason for that? Third, in September 1988 the Prime Minister of Canada had signed an agreement-in-principle making an Indian tribe the biggest private landowner in North America. The chief of the tribe, who had signed the agreement, had stated that in the past the Government had taken advantage of the illiteracy of the Indians, imposing in the written versions of treaties provisions that had differed greatly from what had been agreed upon orally. The tribe accordingly refused to recognize the loss of their rights to their ancestral lands under treaties signed in 1899 and 1926. Would it now be granted specific rights and have a say in all decisions affecting natural resources?

52. ILO had condemned the Canadian Government for clamping down hard on the development of indigenous rights in 1988. Violence against indigenous

communities had increased, while the social and economic conditions of Canadian aboriginal peoples remained worse than those of any other sector of society. For example, figures for 1988 showed that Indians were seven times more likely to commit suicide than non-Indians, and ten times more likely to be imprisoned. The additional information requested regarding the Ku Klux Klan in Nova Scotia had not been supplied.

53. Mr. BANTON thanked the Canadian delegation for its excellent report. However, he hoped that the next report would give more comprehensive qualitative information on the rights protected by article 5 of the Convention. For instance, in connection with article 5 (c), he would be interested in knowing the number of aboriginal people who exercised their right to vote and, if their proportion was lower than the average, why that was so.

54. In paragraph 50 of the ninth report, reference was made to an important decision taken by the Supreme Court in 1987. The preparation of the eleventh report might provide a timely opportunity to review the extent to which the right to work was protected against racial discrimination and whether, in connection with article 6 of the Convention, the remedies were effective. In the tenth report, a reference was made to that point in connection with article 2 of the Convention, but paragraphs 16-23 of the report did not exhaust the issue. Any review might need to describe the public and private labour markets separately and to differentiate between at least some of the provinces. He would expect it to show that employers often had a hierarchy of preferences, and with a varying inclination to discrimination. For example, hierarchies would differ for some kinds of manual work compared with, say, office work. Consequently, the causes of racial discrimination would vary and the remedies ought to vary accordingly. The tenth report indicated that the Government was not relying exclusively on affirmative action programmes and recognized that other remedies were needed. In paragraph 19 it referred to complaints initiated by the Canadian Human Rights Commission, but it was not clear whether victims could initiate complaints themselves. Paragraph 21 of the same report was quite tantalizing because it did not answer the kinds of question which were bound to be generated in a reader's mind when he thought about the material presented.

55. It was to be hoped that the next report would include more information on the implementation of article 5 (e) (iv) of the Convention and on the right to health. Another State party had had the experience of an aboriginal group bringing a suit against it for damage caused by the introduction of alcohol. He would like to know whether the experience in some parts of the United States of America, where some native groups had been devastated by alcoholism, was being repeated in any part of Canada. Information on the incidence of the foetal alcoholism syndrome would be particularly appreciated.

56. He did not expect the Canadian delegation to reply to the points he had raised immediately, but he hoped that they would be taken up in the eleventh report.

57. Mr. LECHUGA HEVIA said that Canada clearly continued to have problems with its Indian population. There also seemed to be a number of anomalies in the activities of the police and the courts. In paragraph 65 of the tenth

report, there was a reference to the wrongful conviction of Donald Marshall Jr. for murder. The criminal justice system in Nova Scotia had been expected to produce its report on the case in January 1990. He would like to know whether the report had been submitted, what it had said and whether Marshall was an Indian or of another ethnic minority.

58. Paragraph 77 of the same report referred to what seemed to be a code of conduct for the police which had been introduced in 1989. He would like to know why such a code had been found necessary and what the results of its introduction had been. The same paragraph referred to the case of the police shooting of a black youth. Clearly there were problems not only with indigenous groups but also with black immigrants. He requested further information on the December 1988 shooting.

59. Mr. FERRERO COSTA congratulated the representative of Canada on the high quality and frankness of the reports. He would, however, welcome additional information on several points.

60. Paragraph 4 of the ninth report referred to the 1987 Constitutional Accord which would have required the Constitution of Canada to be interpreted in a manner consistent with the recognition of Canada's linguistic duality and Quebec's place within Canada as a distinct society. That amendment would not, however, have derogated from existing provisions in the Constitution concerning Canada's multicultural heritage and aboriginal peoples. He would welcome an elucidation of those provisions. He would also like to know what stage had been reached in implementing the 1987 Constitutional Accord. Information regarding the impact of linguistic duality on aboriginal groups and languages would also be helpful.

61. He inquired whether the actions taken to satisfy the concerns of the Province of Quebec, referred to in paragraph 4 of the ninth report, did not raise questions regarding the constitutional distinction between groups of different origins. To what extent were those provisions compatible with paragraph 6, which stated that section 15 of the Canadian Charter of Rights and Freedoms had been held to apply to both the content and administration of legislation, to preclude systematic or unintentional discrimination as well as direct discrimination, and to extend in scope beyond those grounds enumerated in section 15? In that connection, he would like to learn the thrust of the decisions reached in the three cases mentioned in paragraph 6 and, in particular, the Smith, Kline and French Laboratories Ltd. v. A.G. Canada (1987) case.

62. With reference to paragraph 47 of the ninth report, he would like to know the present situation with regard to the trial for war crimes of Imre Fuenta, and that of Michael Pawlowski, referred to in paragraph 26 of the tenth report. He would appreciate further information on paragraph 80 of the ninth report, which pointed out that, in both 1985-1986 and 1986-1987, 27 per cent of the complaints received by the British Columbia Council of Human Rights had been related to race or place of origin and that four of the five formal hearings which had been held since 1985 had found such complaints to be justified.

63. Paragraph 173 of the ninth report stated that, in Quebec in 1985-1986, the 189 complaints of discrimination based on race, colour or ethnic or national origin had represented approximately 14 per cent of all complaints. He would like to know how those complaints had been resolved and how many trials had taken place. What were the functions and powers of the provisional human rights councils or commissions?

64. Mr. VIDAS welcomed the positive developments in Canada during the previous five years as reflected in the report. He was particularly grateful that a report on the Canadian Multiculturalism Act had been submitted to Parliament and hoped that that would represent a positive development for the future.

65. Regarding paragraph 13 of the tenth report, he would like to know whether any progress had been made in the renewed relationship with the Alexander community. What was the outcome of the investigations of Bell Canada and the Canadian Broadcasting Corporation?

66. Reference had been made to the Donald Marshall Jr. case mentioned in paragraph 65 of the tenth report and paragraph 105 of the ninth. He would welcome any new information, particularly regarding the report which had been promised for January 1990.

67. He had observed from paragraphs 159 and 160 of the ninth report that two fifths of the foreigners accepted for immigration into Quebec in 1985 had been Asians. On what basis were foreigners admitted to Quebec and had any problems of racial discrimination arisen?

68. Mr. SONG Shuhua welcomed the Canadian reports, whose very length indicated that the Canadian Government was seriously interested in a continuing dialogue with the Committee. He appreciated the detailed information provided.

69. He had noted the reference to land claims policy in paragraph 25 of the ninth report and wished to point out that some years earlier the Northern Territory in Australia had been confronted with similar problems. The utilization of underground resources was of particular importance in that context. He would like to know what rights the aboriginals had if outsiders wanted to build factories on their land. Did the factories hire aboriginal workers and did they contribute to improvement of the lot of the aboriginals? Alcoholism continued to be a very serious problem in Canada and he would like to know what action was being taken by the Government to solve it.

70. Mr. GARVALOV said that the Canadian Government clearly faced a number of problems in living up to the requirements of the Convention but that situation had not detracted from its performance. Of special interest were the efforts to build a multicultural society, and in that connection the results of the Canadian Multiculturalism Act would be instructive. He hoped the experiment would be successful as other countries, including his own, would be watching Canada's experience carefully.

71. During the meeting the previous day with the Under-Secretary-General for Human Rights, the important question of migration had been touched upon. He

had heard that in recent months Canada had almost closed the door to immigrants. Candidates for residence were required to endure a waiting period during which each individual case was reviewed before a favourable or unfavourable decision was taken on the application. Many Bulgarians found themselves in that situation. He would like to know the criteria on which individual cases were decided. Had any racial discrimination been apparent in the selection process?

72. On the question of education, he would welcome information on how the study of languages was regulated. Was it optional and outside the school system, and were there compulsory requirements? The statistics on ethnic aspects contained in the 1986 census seemed to be incomplete. Annex 1 of the ninth report contained a breakdown of the various ethnic origins. It had always been believed in Bulgaria that Canada housed the greatest number of expatriate Bulgarians, apart from the United States. There were estimated to be some 50,000 Bulgarians in Canada. He had, however, searched the annex and found no trace of immigrants of Bulgarian origin. He would welcome elucidation of the situation.

73. Mr. ABOUL-NASR said that he had found the statistics presented in annex 1 to be somewhat confusing. He would like to know the criterion used to determine ethnic origins; was the choice left to the individual? In some cases it was not clear whether the reference was to the country or geographical area from which the immigrant had come or to what he believed to be his ethnic origin. What, for example, was the difference between black and African black? A Jew coming from Ethiopia could seemingly be registered as Jewish, black or black African. It would be helpful if a phrase such as "as declared by each registering individual" could be added.

74. Mr. DUBOIS (Canada) thanked the members of the Committee for the positive comments they had made on the contents of his country's reports. His Government had continued to seek to maintain a dialogue with the Committee in a constructive, open and frank manner. In that spirit, the delegation would group the questions which had been asked and reply to them in that form or try to deal with them in the next report. He would try, in particular, to respond to the comments made on the constitutional aspects of the report. Some members had referred to the Constitutional Accord. That had come to nothing on 23 June 1990 following a failure to achieve unanimous approval by the provinces within the time limit established by the Constitution. It would have represented a major constitutional amendment requiring the agreement of all the provinces. There would be no point in discussing its clauses as the Accord no longer existed.

The meeting rose at 1 p.m.

CERD/C/SR.906
24 April 1991

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Thirty-ninth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 906th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 15 March 1991, at 3 p.m.

Chairman: Mr. SHAHI

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Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

Ninth and tenth periodic reports of Canada (concluded)

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* The summary record of the second part (closed) of the meeting appears as document CERD/C/SR.906/Add.1.

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Ninth and tenth periodic reports of Canada (concluded) (CERD/C/159/Add.3 and CERD/C/185/Add.3)

At the invitation of the Chairman, Mrs. Whitaker and Mr. Dubois, Mr. Gauld, Mr. Kessel, Mr. Lafleur, Mr. Lapierre, Mr. Low and Mr. Marantz (Canada) took seats at the Committee table.

1. Mr. DUBOIS (Canada) said that, for easier dialogue, the questions raised had been placed under five main headings: multiculturalism, Aboriginal matters, employment equity, judicial and structural questions, and immigration issues.

Multiculturalism

2. Mr. GAULD (Canada) said he appreciated the Committee's interest in Canada's experience in multiculturalism - experience which had already been the subject of two reports to Parliament, the second one being the only one which covered a full year. He would arrange for copies to be sent to the Committee.

3. The second report described the role of multiculturalism in Canada's experience in nation building; secondly, the task performed by the newly created Department of Multiculturalism and Citizenship; and thirdly, the ways in which the federal departments and agencies implemented the Multiculturalism Act. The Act required all federal departments and agencies to reflect the policy in their own policies and activities. It also placed specific obligations on each agency.

4. For the latest report, all 158 federal institutions were asked to account for their activities, and 137 had reported so far. The ones which had not yet done so were, for the most part, small agencies with very limited staff - 6 to 10 people - and with very narrow and specialized mandates. No major obstacle to the implementation of the multiculturalism policy had been identified and it was clear that the implementation would progress further as each institution gained experience.

5. The Canadian authorities were aware of the problems revealed by the indicators of non-integration and were endeavouring to work out not only solutions but also other quantitative indicators to monitor developments in the situation. The matter would be reflected in Canada's next report.

6. The languages spoken in Canada included what were called "heritage languages", and study of those languages was encouraged but was not regulated. Some provincial school systems - in Canada, education was the responsibility of the provinces - afforded an opportunity to learn a number of those

languages, often within the regular school day. In some provinces, full bilingual or trilingual programmes of instruction were proposed, in which students were taught in one or both of the official languages as well as a heritage language. No condition was required to study a heritage language. Many cultural communities had organized heritage language classes outside the school system. In some provinces, such courses received government funding. The Department of Multiculturalism and Citizenship intended to help fund the training of teachers for those courses, as well as the development of the necessary educational materials. An Act had recently been adopted to establish a Canadian Heritage Languages Institute to promote the learning of such languages and serve as a documentation centre for teacher training, the establishment of curricula, and so on.

7. The statistics on ethnic origin which appeared in the ninth report (CERD/C/159/Add.3, paras. 10-14) were based on the principle of self-identification. Every five years, in the population census, Canadians were asked to state the ethnic or cultural group to which they themselves belonged or to which their ancestors had belonged. The form distributed for the census contained a dozen categories, with a blank space for persons to add anything they wanted, and they were asked to state, if appropriate, whether they belonged to more than one category. If the report did not indicate the proportion of Canadians who regarded themselves as being of Bulgarian origin, it was in all likelihood because the proportion was low.

8. It should be noted that, when Canada's ninth report had been prepared, the latest census (1986) had just been taken. Since then, far more detailed statistics were available and he could communicate some of the data to the Committee. Other statistics would be sent later on. In addition to ethnic origin, the data covered the place of birth of Canadians, their mother tongue and the language spoken at home.

Aboriginal matters

9. Mr. MARANTZ (Canada) said that relations between the Canadian Government and the Aboriginals had, from one period to another, evolved more particularly in terms of specific economic and social conditions. The first period - dating back some 250 to 300 years, could be characterized as a period of partnership, in conditions of great equality, between the Europeans and the Aboriginals. The partnership had lain in the exploration of the country, in the initial exploitation of resources - more particularly furs. The second period - about a hundred years ago - had seen the permanent settlement of persons from Europe. It had then proved important to ensure that the indigenous population was protected against incursions by settlers increasingly trying to monopolize land and resources.

10. The third period had been a period of expansion in which, unfortunately, policies of assimilation had been applied. At that time, such policies had held pride of place and seemed to be the only way of protecting the indigenous populations, of providing them with education and various material advantages. The third period had been one of virtually complete development (agriculture, mining, etc.) of the North American continent. Relations between the Canadian Government and the indigenous populations had been based on the idea of assimilation, yet assimilation had not been pushed very far, as could be seen

from the massive rejection by the Aboriginals of the White Paper which had been published by the Government in 1969 and intended to reflect a radical change in the normal relations between the Government and the Aboriginal peoples.

11. That rejection had led to a government review of policy and to a fourth period in Canada's history, marked by recognition of the special status of the Aboriginals, who were more than minorities, more than non-governmental organizations and had a position of their own which was now recognized as such in the Constitution and in Canadian laws. The Government had made great headway since the 1969 White Paper had been rejected. It was now negotiating with the Aboriginals on comprehensive land claims and self-government. The Canadian Constitution contained provisions on the safety of the Aboriginal groups.

12. The social indicators referred to at the 905th meeting should be studied against that background. As to housing, for example, it should be remembered that the matter was partly one of choice: 60 per cent of the Aboriginals preferred to live grouped in their own community, whereas only 40 per cent had chosen to live in urban areas. They were free to come and go as they wished. Those who chose to live in their own community did so mostly in remote regions with few resources. Hence, it was very difficult to find forms of enduring development for them unless they left those communities. Moreover, because the communities were remote, many of the indigenous people had for a long time been without the education opportunities that could now be offered to them. For similar reasons, health statistics pointed to spectacular improvements over the past 15 to 20 years. In addition, in recent years there had undeniably been a cultural renaissance among the Aboriginal groups.

13. One last point related to practical activities. The Canadian Government was discussing with Aboriginal groups questions such as self-government and changes to be made in the Constitution. At the latest session of the Commission on Human Rights the Canadian delegation had, on an equality footing, held long talks with them on two resolutions the Commission had adopted by consensus. He was happy to be able to affirm that relations between the Canadian Government and the Aboriginal population were much more positive than they had been a few years ago, and the future looked very promising.

14. Mrs. WHITAKER (Canada) said that the Canadian Constitution contained several provisions regarding Aboriginal peoples in Canada. They included section 35 of the Constitution Act, 1982, which defined such people as consisting of Indians, Inuit and Metis, and recognized "the existing Aboriginal and treaty rights of the Aboriginal peoples".

15. In recent years, a series of constitutional conferences had been held on Aboriginal matters and had led to the first amendments to the 1982 Constitution Act. The latest of those conferences, in 1987, had been dominated by the issue of self-government. The proposal by the Federal Government had included explicit recognition in the Constitution of the right of the Aboriginal peoples to self-government and implementation of that right through negotiated agreements. The rights covered by those agreements would

be protected by the Constitution and the various governments would be committed to negotiate self-government agreements. Unfortunately, the proposal had not been approved.

16. The 1990 Constitutional Accord had included a proposal for constitutional conferences every three years to discuss Aboriginal constitutional matters. The failure of the Meech Lake Accord meant that the 1990 Constitutional Accord had not proceeded.

17. At the present time, a number of special commissions and committees were in the process of examining the Constitution as a whole, and Aboriginal issues were involved. However, Aboriginal rights were being defined through other processes. First, in a decision interpreting section 35 rights that had been rendered in May 1990 in the Sparrow case, involving Aboriginal fishing rights, the Supreme Court of Canada had found that those rights enjoyed considerable protection from laws purporting to derogate from them. Second, negotiations on comprehensive land claim processes sought to further define Aboriginal rights to land and resources in many parts of the country, in final agreements which would receive constitutional protection.

18. In keeping with commitments for achieving self-government within the existing constitutional framework, self-government negotiations were under way to institute a new type of relationship between the Indian communities and the Federal Government in regard to community self-government and they should lead to agreements to be given effect under specific legislation. The aim was to secure a substantial increase in local control and decision-making, to accommodate the social, cultural and political diversity of Indian communities across Canada, to respond to the proposals of the communities themselves, and lastly, to devise arrangements for greater accountability by Indian governments to their peoples. All of the ensuing legislative provisions would lie within the existing constitutional framework and would be without prejudice to treaty and Aboriginal rights or to any future amendments to the Constitution.

19. The subject for negotiations included a broad range of topics, such as institutions and procedures of government, membership, legal status and capacity, land and resource management and financial arrangements. They could also include other key aspects of community life, for instance education, health, social and welfare services, culture, the environment and the administration of justice.

20. There were several examples of community-specific legislation, such as the Cree-Naskapi (of Quebec) Act and the Sechelt Indian Band Self-Government Act. A number of communities were engaged in substantive negotiations, including the Alexander Band and the Gitksan-Wet'suwet'en, as well as other communities pursuant to their comprehensive land claim. Tripartite processes were also under way for off-reserve Aboriginal groups. Some criticism had alleged that the process resulted in merely municipal forms of government. It could be asserted that the range of powers in certain areas exceeded those of municipalities. To take the example of the Sechelt, the laws of the Band could take precedence over provincial, or even federal, legislation. The question of land claims had been considered a number of times by the Working Group on Indigenous Populations of the Sub-Commission on Prevention of

Discrimination and Protection of Minorities, since Canada is one of the few countries with such processes. There were two types of claims processes in Canada: comprehensive land claims, which were based on Aboriginal peoples' traditional use and occupancy of the land and were comprehensive in scope; and specific claims, which were based on allegations that the Government did not fulfil specific obligations to Indians under treaties, other agreements or the Indian Act. The objective of comprehensive land claims was to establish certainty of rights concerning land and resources. The parties to the negotiations sought at the same time to protect the Aboriginal way of life, while facilitating reasonable economic development. To reach a comprehensive land claims agreement, Canada was prepared to confirm a number of benefits and rights for the claimant groups, including land ownership; various forms of financial compensation; guaranteed participation in land and water management and environmental protection; resource revenue-sharing and guaranteed hunting and trapping rights. Current policy did not require the surrender of all Aboriginal rights. It made provision for Aboriginals to retain title to selected lands, subject only to the terms of the settlement agreement negotiated between the native parties and Government.

21. So far, three comprehensive land claims settlements had been reached, namely the James Bay and Northern Quebec Agreement, the North Eastern Quebec Agreement and the Inuvialuit Final Agreement. Framework agreements outlining the scope of negotiations had been reached with the Nishga'a in British Columbia, the Conseil des Atikamekw et des Montagnais in Quebec and the Labrador Inuit Association. An agreement had been reached in principle with the Tungavik Federation of Nunavut in the Central and Eastern Arctic. It would be the largest settlement in Canada, providing 17,500 Inuit with $580 million in cash compensation, a land quantum of 350,000 square kilometres, hunting rights and guarantees for Inuit participation in land and environmental management. In addition, Inuit goals with respect to a Nunavit territory, a support programme and language guarantees would be considered separately, with the cooperation of the territorial Government.

22. Regarding the Dene-Metis, final agreement had been initialled in 1990, but unfortunately it had then been rejected by a Dene-Metis joint assembly. However, regional negotiations were proceeding with some organizations involved.

23. The comprehensive claims negotiations had been extended and there was no longer a six-claim limit. In British Columbia, where 17 of the accepted claims were located, native representatives and the Governments of Canada and British Columbia had embarked on a process which it was hoped would lead to the negotiation of comprehensive claims in that province. A tripartite task-force had been formed and would assist the parties in developing a common organization and common process for negotiations. The Innu Association of Labrador had formally asked for negotiations to commence and had received interim funding. Accordingly, all land claims which had been accepted by the Federal Government were at the present time under negotiation in some way.

24. Bill C-31 amendments to the Indian Act were designed to bring Canadian legislation into line with the Canadian Charter of Rights and Freedoms, but also to respond to the decision of the United Nations Human Rights Committee in the Lovelace case. The principles underlying the amendments were removal

of discrimination - Indian status no longer being affected by marriage; restoration of status and membership rights; and increased control by Indian bands over their own affairs. A major evaluation study on the effects of Bill C-31 amendments to the Indian Act had been completed recently. Some of the main findings were that over 73,000 people had gained Indian status and were eligible for the rights and benefits of such status; few of those people had actually taken advantage of the new legislation to move to reserve communities; and, since 1985, there had been very substantial programme expenditures for Bill C-31 registrants, mostly for health benefits, housing and post-secondary education.

25. The incidents at Oka had been considered by various United Nations bodies (the Working Group on Indigenous Populations, of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Human Rights Committee). Documents on the chronology of the events and other facts would be transmitted to the members of the Committee.

26. The Federal Government had hoped that the Oka Mohawks' claims would form the subject of a negotiated agreement by January 1990 at the latest. However, no agreement had been reached.

27. The Minister of Indian Affairs and North Canada had continued his efforts to secure an agreement and a number of meetings had been held between the representatives of the Band, the two governments, the municipal authorities, and others. Unfortunately, the death of a policeman on 11 July had turned the issue from one of territorial claims into one of the rule of law. It had proved necessary to dismantle the barricades around the Oka community and at the Kahnawake reserve. Under the Constitution, police questions were a matter for the province of Quebec and it had therefore lain with the Quebec Government to put an end to the violence. However, the Federal Government had done everything in its power to facilitate a peaceful settlement of the conflict. In the course of the summer it had bought up land and, after the barricades had been dismantled in August and September, had tried to institute a process of negotiation with the population of the Kanesatake community. As mentioned at the 905th meeting, a framework agenda had been proposed for stages in the negotiations to cover land issues still pending and questions of economic development and social development.

28. Fifty-three aboriginal languages were spoken in Canada. Three quarters of Indian students in Indian-managed schools and in federal schools were taught an indigenous language and one third of the Indians in provincial schools received instruction in their language. In the Northwest Territory, where the Aboriginals accounted for a high proportion of the population, six Aboriginal languages had been granted official status.

29. In addition, federal funding to help Aboriginal populations had increased considerably in recent years.

30. The alcohol problem was a real one in some communities. Some groups had made concerted efforts to overcome it and there were special programmes designed to help communities in that regard. However, she had no specific data on that point.

31. With regard to changes in the standards of living of Aboriginal peoples in Canada, since 1960 Indians had been staying longer in school and, thanks to an ambitious higher education programme for Indian and Inuit students, there were now nearly 22,000 students from those groups. A third of the entire housing stock for Indians on reserves had been built in the past six years and another third had been substantially renovated. Moreover, an expenditure of $275 million had just been announced for drinking water and sewerage services in some northerly communities. Life expectancy among the Indians, which had admittedly been lower than for the population as a whole, had increased by 10 years over the past 3 decades. Lastly, employment rates had risen 10 per cent between 1971 and 1986, but the figures were still lower than for the Canadian population as a whole, and so the Government had launched special economic programmes to narrow the gap.

32. Mr. LAFLEUR (Canada), referring to Mr. Yutzis' analysis of the incidents at Oka the previous summer, said that the Quebec Human Rights Commission had affirmed not that the police action to dismantle the barricades had been illegal but that the arrival of policemen en masse had made the situation worse. One might well question the reasons for such a broad-ranging operation, but the police had responded to a request from the Oka municipality and to a court injunction.

33. Again, the Quebec Minister of Aboriginal Affairs had recently confirmed that the province would take part in negotiations to be held between the Kanesatake Mohawks and the Federal Government, with the participation of the Oka village and parish authorities. The negotiations should lead to the establishment of a territorial entity for the Kanesatake community, a definition of the community's administrative responsibilities and to closer relations between the Oka municipality and Mohawk community on the one hand and non-Aboriginals on the other.

34. In response to questions from a number of experts about Aboriginal affairs, he said that, in Quebec, the Government was engaging in a consultation to work out a government policy. The relevant text would be published in the winter of 1992. The policy should make the population aware of the problems of the Aboriginals, bringing in various groups to help solve them and giving those populations the confidence to look to their own future.

Employment equity

35. Mr. GAULD (Canada), replying to questions raised by Mr. Yutzis and other experts, pointed out that employment equity programmes covered four groups: women, disabled persons, visible minorities and Aboriginal groups. The Employment Equity Act applied to all firms in the private sector falling under federal regulations, in other words, to close on 650,000 wage earners. In addition, under federal policy all heads of firms employing more than 100 people wishing to submit tenders for federal contracts for more than $200,000 were required to certify their commitment to applying the provisions of the Employment Equity Act and implementing the relevant programmes. Some 1,350 firms were covered, i.e. with a total staff of approximately 1 million. Moreover, the whole of the Federal Administration (approximately 250,000 employees) was required to apply the federal employment equity policy.

36. As to Mr. Banton's question about the ranking of employers in terms of the degree of employment equity (CERD/C/185/Add.3, para. 21), the latest report to Parliament, submitted in December 1990, showed that employers had been ranked from A to C depending on a number of criteria, including the recruitment and promotion of members of groups covered by the Employment Equity Act.

37. Lastly, with reference to a question by Mr. Garvalov, Canada had no political party with an ethnic basis.

Judicial and structural questions

Immigration issues

38. Mr. LOW (Canada), responding to questions raised by Mr. Ferrero Costa, Mrs. Sadiq Ali and Mr. Yutzis on hate propaganda and war crimes, said that in December 1990 the Supreme Court of Canada had ruled on the cases of John Ross Taylor, James Keegstra, Donald Andrews and Robert Smith and confirmed the judgements under legislation prohibiting incitement to hatred. It had not yet rendered its decision in the case of Ernst Zundel, a journalist accused of publishing information denying that the holocaust had ever taken place. Mrs. Sadiq Ali had discussed the troubles which had occurred in Nova Scotia and he would point out that the very serious incidents caused by the Ku Klux Klan had not recurred and that the judgements in the recent cases would serve as a warning.

39. As to Mr. Ferrero Costa's question, the case of Imere Finta, suspected of war crimes, had been heard in January 1991 by the Supreme Court of Ontario, which had not yet given its ruling. The charges against Michael Pawlowski, also accused of war crimes, had been struck out by the trial judge on the basis of inability to mount a defence because of the need to gather evidence in the Soviet Union. An appeal was being made against the decision, but no ruling had yet been given. In the Reistetter case, the charges had been stayed by the prosecutors due to the death of two key witnesses. In the case of Luitjens, who had been found guilty of collaborating with the occupation authorities, deprivation of citizenship proceedings prior to deportation were pending.

40. Mr. Sherifis had asked whether Canada was considering the possibility of making the declaration provided for under article 14 of the Convention. The matter had been discussed at length at a meeting of federal and provincial ministers in 1986. However, since Canadians had a number of other measures available to them, more particularly, the machinery of the Human Rights Committee under the Optional Protocol, the ministers had not agreed to a declaration.

41. Mr. de Gouttes, Mr. Wolfrum and Mr. Yutzis had asked for further details about exclusion in regard to the provisions of the Public Service Employment Act. The purpose of those provisions was to expedite the recruitment of persons from the four target groups, namely women, disabled persons, visible minorities and Aboriginal peoples.

42. With reference to the questions raised by Mr. de Gouttes, Mr. Ferrero Costa, Mr. Vidas and Mr. Wolfrum, he would point out that Canadians had more agencies, per inhabitant, for the protection of human rights than any other nation. Canada had at least 12 human rights commissions, councils and agencies to receive complaints of discrimination, as well as many other ombudsmen and bodies dealing with issues of access to information, language, and privacy. The commissions, which were independent of the Government, had a mandate to investigate, conciliate and, if necessary, conduct litigation on behalf of complainants to seek a remedy for discriminatory practices.

43. Complaints regarding discrimination laid by the Canadian Human Rights Commission against Bell Canada and Radio Canada (CERD/C/185/Add.3, para. 19) were still before the courts.

44. Generally speaking, all complaints were the subject of procedures for settlement, conciliation through the Commission, or court decisions.

45. A comment by Mr. de Gouttes seemed to imply that the figures given by Canada in connection with complaints of discrimination related to Aboriginals alone. Actually, the information had concerned all complaints about discrimination on the grounds of race, nationality or ethnic origin.

46. He would point out that the provisions of section 15 of the Canadian Charter of Rights and Freedoms, which set forth the right to equality without discrimination, applied to the laws and to their implementation.

47. As to Mr. Reshetov's query, the question of self-determination did not fall within the framework of the International Convention on the Elimination of All Forms of Racial Discrimination, and the Committee was not the appropriate forum to discuss the matter. It came more under General Assembly resolution 1514 (XV) and the relevant provisions of the two International Covenants. In addition, the aspects mentioned by Mr. Reshetov had been the subject of a recent examination of Canada's reports under the Covenant on Civil and Political Rights. Personally, he would prefer not to touch on matters which lay outside the Convention; he was willing to supply information informally if it were of interest to the member from the USSR.

48. As to the Marshall case, the Royal Commission of Inquiry's conclusions recognized, among other things, that there had been a miscarriage of justice and that the criminal justice system had failed Mr. Marshall at every stage of the proceedings. The Commission of Inquiry had, in connection with that case, made 82 recommendations on the administration of criminal justice in Nova Scotia. He would transmit to the Committee the report of the Commission and the text of the recommendations, as well as the replies from the Government of Nova Scotia and the response of the Government of Nova Scotia and the Canadian Government to the recommendations. He was in a position to reassure members of the Committee that important measures had been taken by the provincial Government and the Federal Government to draw lessons from that miscarriage of justice.

49. He wished to give some clarification regarding a question by Mr. Lechuga Hevia about police use of firearms against blacks. The incidents

alluded to by Mr. Luchuga Hevia had occurred in the provinces of Quebec and Ontario. In Toronto, more particularly, in August 1988 the police had shot a black person who had taken people as hostages. In two other incidents the police had shot at blacks in stolen vehicles, and had also shot at a 16-year-old black who had refused to stop after committing a driving offence. He would assure the Committee that, in each of those cases, the policemen were subject to criminal prosecution and the results were still pending. The incidents had certainly not been ignored by the competent authorities. Studies had been conducted that had resulted in the enactment of legislation by the Province for a public complaints procedure. Efforts to avoid any recurrence had been made under the promotion of police-community relations programmes. In Quebec, recommendations had been made and implemented on the basis of a report by the Quebec Human Rights Commission.

50. Freedom of movement within Canada was guaranteed under section 6 of the Canadian Charter of Rights and Freedoms. Subsection 2 affirmed that all Canadian citizens could freely choose their place of residence and earn a livelihood in Canada. However, some restrictive measures had been taken in some provinces. For example, on Prince Edward Island, a vacation resort where many houses belonged to owners who used them only during the holidays, measures had been taken to minimize non-resident ownership. In Saskatchewan, steps had been taken to restrict non-resident ownership of arable land. In British Columbia a law which regulated the right of medical practitioners to set up practice in particular areas of the province had been struck down by the provincial Court of Appeal. In that regard, the right of property in areas governed by federal legislation was protected under the 1960 Bill of Rights.

51. As to the questions by Mr. Yutzis and Mr. Reshetov about immigration, fuller particulars could be supplied in the next report. It was not true to assert that Sikh refugees had been turned back but Polish refugees had been allowed to stay in the country. That would be a breach of the 1951 Convention relating to the Status of Refugees and the 1967 Protocol. The Canadian authorities fully abided by the criteria set out in those instruments for granting or refusing refugee status. Applications for asylum were considered case-by-case and the procedure was intended to help candidates whose application was made on credible grounds. Nevertheless, it should not be forgotten that, at the present time, approximately 100,000 people were asking for refugee status in Canada, and to deal with all those cases took a certain amount of time and careful administration. Pending a decision, however, applicants were housed, fed and educated through social welfare systems that would be the envy of refugee claimants in many other countries. In that regard the Canadian Government fulfilled its obligations under international instruments concerning refugees, under the Covenants, the International Convention on the Elimination of All Forms of Racial Discrimination and other relevant conventions. Canada also received a large number of immigrants. Data had been provided by a census conducted in 1986 but the census had been partial. A full census was carried out every 10 years and the next one would be in June 1991. Canada would then be able to provide detailed data in a future report.

52. Mr. RESHETOV said he regretted that he had not received any reply to his questions about self-determination. From that standpoint, the report and the oral presentation was all the less satisfactory in that Canada was a signatory to the Helsinki Final Act.

53. The CHAIRMAN pointed out that the International Convention on the Elimination of All Forms of Racial Discrimination contained no provision on self-determination; rather, the relevant principles were set out in the Covenants. There was even less point in pressing the matter inasmuch as the Canadian delegation had said that it could discuss things informally.

54. Mr. RESHETOV said he doubted whether the question could be transferred to the corridors.

55. The CHAIRMAN said that no call was being made for secrecy, and he simply had in mind the scope of the Convention. He would urge Mr. Reshetov not to press his questions.

56. Mr. YUTZIS said he recognized that the question of self-determination was difficult to discuss in the present search for a new constitutional agreement. In addition, he would like the Canadian delegation to clarify the point made in the ninth report about the conflict between freedom of expression and the prohibition on racist propaganda. As to non-discrimination in employment, how was account taken of merit and qualification in implementing the new Employment Equity Programmes Exclusion Approval Order, mentioned in paragraph 16 of the tenth report (CERD/C/185/Add.3)?

57. Mr. WOLFRUM said he would like to ask two questions which, in his opinion, did not fall outside the range of the Convention, in connection with self-determination by the Aboriginal communities. Firstly, did the Canadian Government allow transfrontier relationships between tribes established on both sides of the frontier with the United States of America, and did it allow representative bodies to operate across borders? Secondly, how could an Aboriginal community reject a member, and what were the criteria involved?

58. Mr. LECHUGA HEVIA asked whether steps had been taken against the persons responsible for the wrongful conviction, mentioned in paragraph 105 of the ninth report (CERD/C/159/Add.3), of Donald Marshall, a Micmac Indian sentenced for murder and imprisoned for 11 years.

59. Mr. de GOUTTES said he hoped that Canada's next periodic report would include data on crime, drug addiction and alcoholism among the Aboriginal peoples.

60. Mr. LOW (Canada), first answering Mr. Yutzis, said that in cases involving protection of freedom of expression and the prohibition of racist propaganda, the courts sought to render both balanced and detailed judgements so as not to leave any loophole for incitement to hatred. In the Andrews and Smith case, the guilty had been convicted. The texts of the decisions by the courts in that case and others of that kind would be transmitted to Mr. Yutzis if he so wished. As to the request for clarification on the assessment of merit and qualifications in Employment Equity Programmes, which were the subject of the Order he had mentioned earlier, the word "exclusion" could well

lead to misunderstanding. In actual fact, the purpose of the Order was to make it easier to appoint persons from minorities by cutting bureaucracy down to a minimum. If, for example, a carpenter or other tradesperson who was widely available was needed, the Employment Equity Programme provided a procedure to find a qualified candidate from among the disadvantaged groups as soon as possible.

61. As to Mr. Wolfrum's question, transfrontier reserves did exist and the kind of relationships mentioned were maintained within a tribe. There was even the particularly complicated case of a reserve straddling the United States of America, Quebec and Ontario. In such transfrontier areas, special Customs arrangements were sometimes applied to make it easier for the Indians to come and go, and to import and export items of special interest to their traditional and religious needs. Similarly, the Circumpolar Conference existed, but it was more a process than an institution. With reference to another question by Mr. Wolfrum, it should be pointed out that Indian communities had been granted the right to establish codes regulating membership of their bands.

62. As to Mr. Lechuga Hevia's point, following the recognition of the miscarriage of justice in the case of Donald Marshall, changes had occurred in the posts held by those who had been involved in the matter. The chief of the municipal police who had been involved had died shortly after the publication of the conclusions of the Royal Commission of Inquiry, and another official had retired.

63. The suggestion by Mr. de Gouttes about data on crime, drug addiction and alcoholism was an excellent one.

64. Mrs. WHITAKER (Canada), supplementing Mr. Low's answer to Mr. Wolfrum, said that Indian bands who had assumed responsibility for their membership code could reject individuals who applied for membership; in Canada, a number of persons had Indian status but were not members of a band.

65. Mr. YUTZIS said that, despite the reply now given by the representative of Canada, he still experienced some doubt and even some unease about the implementation of the Order. If the purpose was to make it easier for members of minorities to gain access to employment by by-passing cumbersome bureaucratic procedures, why not simply eliminate those procedures? The impression one gained was of some form of discrimination in those procedures and, in short, a kind of reverse differentiation was needed to remedy it.

66. On the other hand, he had not entirely understood the situation regarding the difference in treatment between Sikh refugees and Polish refugees. His attention had been drawn to information from the World Council of Churches in Canada that the Sikhs in question had been expelled in the context of a national emergency in 1987, whereas the Poles had not been in the same situation at all.

67. The CHAIRMAN thanked the Canadian delegation for answering the plethora of questions from members of the Committee, in a way which was to a large

extent satisfactory. The Canadian delegation could therefore withdraw, before the Committee proceeded to evaluate Canada's ninth and tenth periodic reports (CERD/C/159/Add.3 and CERD/C/185/Add.3).

Mrs. Whitaker, Mr. Dubois, Mr. Gauld, Mr. Kessel, Mr. Lafleur, Mr. Lapierre, Mr. Low and Mr. Marantz (Canada) withdrew.

The meeting was suspended at 5.05 p.m. and resumed at 5.15 p.m.

68. Mr. YUTZIS said it was gratifying that the Canadian Government had submitted a very comprehensive report, prepared in accordance with the Committee's guidelines, and had not tried to cover up problems which could not fail to arise in such a complex society as Canada's. The very number and competence of the members of the Canadian delegation reflected the Government's willingness to pursue its dialogue with the Committee and to remedy problems which still impeded implementation of the Convention.

69. Regrettably, some obstacles encountered in instituting self-government for the Aboriginals had not been mentioned and the time-frame for responding to territorial claims by the Aboriginal communities had not been indicated.

70. He shared the idea expressed by some members of the Committee that the question of self-determination, which was extremely complex, was tied in with that of self-government. Unfortunately, the various provinces had not agreed at Meech Lake on the changes to be made in the Canadian Constitution, and he would emphasize that a complicating factor in the implementation of some of the provisions of the Convention on a federal scale lay in the fact that each province had its own legislation.

71. Mr. ABOUL-NASR said he endorsed the ideas expressed by Mr. Yutzis, with the exception of those on self-determination.

72. Mr. VIDAS said he shared Mr. Aboul-Nasr's view.

73. The CHAIRMAN said that the consideration of Canada's ninth and tenth periodic reports was closed.

The public meeting rose at 5.25 p.m.

CERD/C/SR.907
21 March 1991

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Thirty-ninth session

SUMMARY RECORD OF THE 907th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 18 March 1991, at 10 a.m.

Chairman: Mr SHAHI

later: Mr. VIDAS

CONTENTS

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

Tenth and eleventh periodic reports of the United Kingdom of Great Britain and Northern Ireland

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Tenth and eleventh periodic reports of the United Kingdom of Great Britain and Northern Ireland (CERD/C/172/Add.11 and 16, CERD/C/197/Add.2)

At the invitation of the Chairman, Mr. Fries and Mr. Campbell took seats at the Committee Table.

1. Mr. FRIES (United Kingdom) said that his Government attached great importance to its obligations under the Convention. Ethnic minorities comprised some 5 per cent of the population of the United Kingdom, and thus harmonious race relations were crucial to the well-being of society. The Government's aim was to enable ethnic minorities to play a full part in the country's social and economic life. The two reports the United Kingdom was submitting following its ninth report of four years before were somewhat lengthy, and he hoped they would be useful to the Committee; any comments on the way the material had been presented would be helpful.

2. The Committee's work was of great interest not only to the Government itself, but to all bodies concerned with community relations. Thus, a seminar had been organized recently to mark the twentieth anniversary of the Convention, by human rights groups and held at the Commission for Racial Equality, specifically to discuss the work of the Committee.

3. The United Kingdom's ethnic minorities constituted a long established sector of its population: of the members of such minorities, more than half had been born in the United Kingdom and three quarters were British citizens. Racial discrimination was therefore an issue that concerned British citizens and not immigrants alone, although the question of immigration, too, was dealt with in the reports.

4. The objectives of eliminating discrimination and promoting equal opportunities and good race relations were enshrined in United Kingdom legislation; attaining those objectives, however, was a long and difficult process, and the reports made no claims that complete success had been achieved. The Race Relations Act of 1976 was at once a statement of principle on combating discrimination and a source of redress to those who had suffered from it. Under the Act, the Commission for Racial Equality had been established; the Commission was a public body, supported by the Government but independent of it, whose task was to promote equal opportunities and good community relations.

5. Over the period covered by the two reports, the Government had taken steps both to strengthen the law and to increase the effectiveness of the Commission. Some years before, the Commission had undertaken a review of the Race Relations Act, a review which had been discussed by the Committee on a number of occasions, and it was currently preparing a further review, which the Government would be considering in due course. In the meantime, steps were being taken to assess the effectiveness of legislation on the question, on the assumption that the way in which it operated was as important as the

provisions it contained. A report by the independent Policy Studies Institute on the effectiveness of provisions against discrimination in employment was expected in the near future.

6. Racial harassment and attacks were also taken very seriously by the Government, and the eleventh report (CERD/C/197/Add.2) gave details of steps taken to coordinate action to tackle the problem, notably through the work of the Racial Attacks Group, which had emphasized the need for cooperation between the police and other authorities, in particular housing and education. The impact of the Group's work was being followed up, and more information would be given in the next report.

7. Mercifully, there had been no recurrence in the United Kingdom of public disorders on the scale experienced in 1981 and 1985, but there had been two recent events which had placed some strain on community relations. The first had been the controversy caused by the publication of Salman Rushdie's The Satanic Verses, and the second had been the Gulf War: both had led to a certain increase in racial incidents, though precise statistics were not available. Efforts had been made by the Government, in conjunction with the police and community leaders, to deal with the situation, and one good outcome at least had been that better dialogue had been established with members of the Muslim community. Ministers had made a number of clear statements of the Government's commitment to justice and equality for all, including ethnic minorities.

8. While the reports did not attempt to conceal the disproportionate disadvantages that members of ethnic minorities experienced, it should be realized that many other people in the United Kingdom suffered from those same disadvantages. It was thus essential to good community relations that common problems be tackled on the basis of need, rather than on the basis of race. For example, the Government was committed to improving education for the community as a whole, rather than for ethnic minorities in particular. Its "Action for Cities" programme was designed to help all residents of inner city areas, although it would especially benefit ethnic minorities, who lived disproportionately in such areas.

9. One programme designed specifically to benefit ethnic minorities, however, was the grant-aid under section 11 of the Local Government Act of 1966, under which some £115 million a year was allocated to support any action taken by local authorities to assist minorities with special problems, such as language difficulties. Recently, the criteria for allocation of the grant had been revised, with the aim of removing any remaining obstacles preventing minorities from playing their full part in the life of the community.

10. Mr. WOLFRUM, country rapporteur, said that, as already pointed out by the United Kingdom representative, the two reports made no claim that the Government had succeeded in achieving full ethnic harmony in the country. Their frankness was highly commendable and made the various projects outlined in the report the more convincing. In general, the reports were drawn up in accordance with the Committee's guidelines, although the format could be improved.

11. He noted from the information given in annex C to the tenth report (CERD/C/172/Add.11) that the total ethnic minority population had increased from 2.1 million in 1981 to 2.4 million in 1984-1986, and to 2.6 million in 1986-1988, whereas the white population had remained more or less constant. At the moment, the two largest ethnic groups were the Indians and West Indians, although the latter's numbers had declined in recent years. He drew attention to paragraphs 15 and 16 of the eleventh report (CERD/C/197/Add.2), which stated that it had been decided to include the question of ethnic origin in the 1991 census in recognition of the need for more accurate information on population breakdown. While that change of policy was commendable, he would like to know why it had not been made earlier, and whether representatives of ethnic groups had been consulted or only the various government bodies concerned.

12. He was pleased to see from paragraphs 15-19 of the tenth report (CERD/C/172/Add.11) that the United Kingdom had provided the comparative statistics asked for by the Committee on such points as qualifications of school leavers, income levels and representation in the civil service, the judiciary and the police as between Catholics and Protestants in Northern Ireland.

13. He noted that the Race Relations Act of 1976, in conformity with article 1 of the Convention, made both direct and indirect discrimination unlawful, but the reports themselves gave no indication as to how "indirect discrimination" was to be interpreted. The 1986 annual report of the Commission for Racial Equality defined indirect discrimination as occurring when unfair requirements and conditions which could not be shown to be "justifiable" were applied to certain racial groups. However, experience in particular cases seemed to show that in practice there was a great deal of latitude in interpreting the word "justifiable": thus, in one case, discrimination had been justified on grounds of "commercial necessity", and in another on grounds of what would be acceptable to a "right-thinking person". He would like to know how the upholding of discrimination in such cases could be justified, in view of the fact that article 1 of the Convention unconditionally prohibited any practices having a discriminatory effect. Why was the corresponding justifiability clause in the Sex Discrimination Act interpreted in a much narrower sense, and why did the Employment Act propose to narrow the scope of that clause in the Sex Discrimination Act, but not in the Race Relations Act?

14. The reports stressed that because relations between the majority and minority communities in Northern Ireland did not involve any problems of racial discrimination, no specific legislation in the matter was needed. The Committee had always questioned the validity of that argument; since there was already strict legislation prohibiting discrimination on religious grounds, it should not have been difficult from a technical point of view to provide for similar legislation prohibiting it on racial grounds. Thus, he noted that the Fair Employment (Northern Ireland) Act of 1989 only covered discrimination on religious and political grounds, and not on racial grounds: since that Act, too, prohibited indirect discrimination, he would like to know whether it contained a limitation provision similar to that found in the Race Relations Act.

15. Both reports referred to the Inner Cities Initiative as an example of an attempt to combat racial discrimination in urban areas, but no hard facts had been given on how far that initiative had succeeded in achieving its aims. The Urban Programme appeared to have more or less the same objectives, and he wondered if it might not have been more efficient to combine the two projects. Similarly, although both reports outlined the legal obligations of local authorities to promote equality of opportunity and good race relations, they gave very little information about what was actually being done. According to a report to the House of Commons Employment Committee, unemployment was far higher for members of ethnic minorities than for the rest of the population. Although Liverpool's ethnic minorities amounted to 8 per cent of its population, only 1 per cent of Liverpool City Council's employees belonged to minorities. Did that situation still prevail? The Commission for Racial Equality had reported that minority groups were under-represented in the health services of south Manchester, that Westminster City Council was guilty of discriminatory practices, and that a disproportionately low number of trained nurses in nursery schools were black. Had that situation now been remedied? There seemed to be a similar lack of balance in respect of recruitment to the police, and it would be of interest to know the percentage of officers from ethnic minorities among police officers in the larger cities of the United Kingdom. According to a recent report by the European Parliament on racism and xenophobia, only 1 per cent of police officers in England and Wales were from ethnic minorities, although such minorities made up 3.9 per cent of the population as a whole. The disproportion seemed to be even worse in some sectors of the army. Was it true for example, that there were only two black members of the Regiment of Guards?

16. According to a report to the European Parliament, the United Kingdom still had an intolerably high level of racial harassment and violence, directed mainly at Asian members of the community and to a lesser extent at West Indians. In 1988, the figure accepted by the Home Office had been 70,000 cases a year. In 1989, the Commissioner of the Metropolitan Police had stated that racially-motivated crime in the capital had risen by 60 per cent in the first quarter of the year. In those circumstances, the statement made in paragraph 38 of the eleventh report seemed rather unsatisfactory. Also questionable was the statement made in paragraph 42 of the same report according to which the number of incidents might have decreased. The United Kingdom representative himself had said that tension had risen as a result of the Satanic Verses case and the Gulf crisis. The eleventh report, especially paragraph 43, gave the impression that the Government was concentrating on gathering information through reports. The incidents actually called for the education and information of the white and minority populations and for the exhaustion of the possibilities offered by the Public Order Act. Only paragraph 35 of the tenth report (CERD/C/172/Add.11) mentioned the possible prosecution of offenders and the strengthening of the criminal law. The latter had already been done, since extended powers to act against incitement to racial hatred had come into force in 1987. The reports of the Commission for Racial Equality did not provide much information concerning the criminal prosecution of racially motivated attacks or harassment. The Commission's 1987 report merely mentioned that young offenders, from ethnic minority communities were significantly less likely to succeed with "not guilty" pleas and more likely to receive harsher sentences than white offenders, and that black prisoners now represented 14 per cent of

the prison population, a figure in excess of their representation in the general population. The United Kingdom representative might wish to explain: who was causing the incidents mentioned and what had been done to educate or inform the public with a view to achieving a higher degree of mutual tolerance; to what extent offenders had been punished; and what sentences were imposed on white and minority group offenders. Information was also required about treatment in prison. And it would be interesting to know whether, owing to the amendments to the Public Order Act which had come into force in April 1987, there had been more prosecutions of offenders against the prohibition of incitement to racial hatred. The United Kingdom representative might also wish to comment on the statement made by the Chairman of the Commission for Racial Equality to the effect that most black people under 30 would have been sent to prison or have been taken into youth custody by the year 2000.

17. It should be noted that United Kingdom national law did not fully implement the provisions of article 4 (b) of the Convention. That could be the reason why no steps had been taken to prohibit the British National Party, described in a report to the European Parliament as "an openly Nazi party". The United Kingdom representative might wish to comment on that point. The United Kingdom had made an interpretative statement when ratifying the Convention, but it would be interesting to know whether the Government would be willing to reconsider its position. In any case, it was striking that the United Kingdom had made a unilateral interpretation rather than enter a reservation.

18. The reports of the Commission for Racial Equality contained information on discriminatory advertisements. Section 29 of the Race Relations Act made it unlawful to publish an advertisement which indicated, or might be understood to indicate, an intention to discriminate. Proceedings might be brought only by the Commission. That part of the Race Relations Act was unique and highly commendable.

19. Neither report contained information on the implementation of article 3 of the Convention and in that respect they were not in conformity with the Committee's guidelines or the Convention. However, paragraph 39 of the tenth report (CERD/C/172/Add.11) indicated that there were some 300,000 United Kingdom passport holders resident in South Africa and another 500,000 persons who might be entitled to British passports.

20. Both reports provided ample information on immigration. The tenth report mentioned a series of changes to the immigration rules. The admission of spouses under the age of 16 was no longer permitted. Why was that so? The minimum age for marriage in the United Kingdom was presumably 16. However, that appeared to run counter to Lord Parker's statement in the Alhaji Mohamed v. Knott case that a marriage involving a 13-year-old girl should be recognized and that proper account should be taken of the way of life of overseas communities.

21. The Committee would be interested in knowing the new visa requirements for citizens of Bangladesh, India, Pakistan, Ghana and Nigeria, and the representative of the United Kingdom might wish to comment on the statement in the Commission for Racial Equality's 1987 report to the effect that the

amendments which the eleventh report (paras. 57 et seq.) described as having entered into force would remove the right of ethnic minority members to family unity and would unduly restrict the rights guaranteed under article 6 of the Convention, since persons with less than seven years' residence lost their right to appeal against deportation. The representative might also be in a position to explain the statement made in the eleventh report on polygamous marriages, since there were several cases in which such marriages had been recognized. It had been asserted that immigrants had to pay high fees for the DNA blood tests needed to prove family ties.

22. Both reports gave substantial information about the employment of minority-group members in industry. The efforts of the United Kingdom Government in that respect seemed to be to provide for better training of minority-group members so as to enhance their chances on the labour market. Such an approach was highly commendable. Nevertheless, the unemployment rate, especially for some ethnic groups, was considerably higher than for the indigenous British population, although in the case of certain ethnic minorities it was lower. In 1988, the unemployment rate for whites had been 8.6 per cent and for Pakistanis 24 per cent. Thus the gap in the unemployment rates had not changed to a considerable degree. The United Kingdom representative might wish to comment on that and to inform the Committee whether section 18 of the Local Government Act, according to which local authorities had the power to foster businesses run by minority groups, had had any positive effect.

23. New efforts had been made to ensure the equality of treatment of members of ethnic-minority groups as far as housing was concerned. The eleventh report mentioned that in the 1988 Housing Act and the 1989 Local Government Housing Act, the Government had empowered the Commission for Racial Equality to issue statutory codes of practice. Although the first code had been issued only in 1990, it would be helpful to know its contents and what was meant by the assertion that such a code was admissible as evidence in court. Had that system already had any positive effects on the housing situation? Some information on the findings of the survey undertaken by the Housing Corporation to evaluate the housing prospects of the black and ethnic minority communities would be appreciated. The Committee should take note of the findings given in paragraphs 90 et seq. of the eleventh report concerning the housing situation in Birmingham, which still called for comment.

24. The 1988 report of the Commission for Racial Equality mentioned several cases of discriminatory practice by estate agents. Could the United Kingdom representative inform the Committee about those cases and the action taken by the Commission to counter them, and could it make available the booklet Housing and Ethnic Minorities, which seemed to contain relevant information?

25. Only limited data had been provided on the question whether members of ethnic minorities groups had full access to the social security system. Some relevant information on that point might be included in the next periodic report.

26. Paragraph 74 of the tenth report and paragraph 106 of the eleventh report referred, in almost identical terms, to industrial tribunals and the action they might take in cases of alleged discrimination in employment matters. It

would be interesting to have some information on the composition, procedures and mandate of those tribunals, and to know what fees they charged to have a case decided by them and whether it was necessary to be represented by a lawyer.

27. Paragraph 108 of the eleventh report mentioned the introduction of a new Broadcasting Bill which would make it possible to establish community stations. What was the situation with regard to those very praiseworthy plans?

28. Paragraphs 110 et seq. gave extensive information on the commendable project to train minority teachers resulting from the recommendations made by the Swann Committee. An indication of the findings of that Committee, as well as of the percentage of minority students at all levels of education, would be appreciated. An explanation of the statement made by the Under-Secretary of State for Education on 4 December 1989 concerning the possibility that freedom of choice might lead to a segregated system would also be welcome.

29. He would appreciate information on a judgement in which the Court of Appeal had upheld a decision by an industrial tribunal that advertisements for jobs in a housing benefit department stating that the posts were confined to Afro-Caribbean and Asian applicants were unlawfully discriminatory and contrary to section 29 of the Race Relations Act.

30. Turning to the supplement to the tenth report concerning dependent territories administered by the United Kingdom (CERD/C/172/Add.16), he noted that it contained new information on Anguilla, Bermuda, the Cayman Islands, the Falkland Islands, Gibraltar, Hong Kong, Montserrat, Pitcairn, St. Helena and the Turks and Caicos Islands, and that demographic data were provided for Anguilla and Pitcairn but not for the others. In some cases it was mentioned that the compilation of statistics about racial origin was regarded as superfluous. Nevertheless, the Committee had to ask for that information since it had to investigate whether people of a different colour occupied the same place in society. That question seemed to be especially appropriate since the report mentioned that in the Turks and Caicos Islands, for example, intermarriage had been more frequent only in recent years. In addition, the Committee needed to be informed about the 3,000 Haitian nationals mentioned as living in that territory.

31. Most but not all of the territories had legislation prohibiting racial discrimination or at least providing for equal treatment. As far as Anguilla, Montserrat and St. Helena were concerned, it was stated that, since no discrimination existed, such legislation was regarded as superfluous. It was the practice of the Committee to point out that such legislation was mandatory under article 2 of the Convention. It seemed advisable to take the same attitude as had been taken for the Cayman Islands.

32. Concluding his remarks on the United Kingdom's comprehensive and frank reports, he asked why the United Kingdom Government had not withdrawn the reservations which it had made upon ratifying the Convention, one of which - that relating to Fiji - was somewhat out of date.

Mr. Vidas took the Chair.

33. Mr. de GOUTTES thanked the United Kingdom delegation for the abundant information which it had supplied in its excellent reports. He noted that in paragraph 5 of its tenth report (CERD/C/172/Add.11) the Government viewed the division between the majority and minority communities in Northern Ireland in political and religious rather than in racial terms. He wondered whether, in view of the very varied fields in which discrimination occurred, that was absolutely true. Both the tenth and eleventh reports indicated the percentage of Roman Catholics holding senior posts in the judiciary, and it was interesting to note that a majority of Senior Crown Counsel were believed to be Roman Catholics. Greater minority participation in the legal profession would undoubtedly help to combat discrimination in the courts. Similarly, an increase in ethnic minority participation in the police force could be a very important factor in reducing the incidence of racial discrimination by the police.

34. Initiatives to improve life in inner cities were a very important aspect of the campaign against racial discrimination since, for some reason which he would like to have explained to him, the greater part of the United Kingdom's minority populations lived in inner cities and not in suburbs. More recent evaluations of the work done by the City Action Teams and Task Forces mentioned in paragraph 22 of the tenth report and of the programme for improving safety in inner cities mentioned in the eleventh report would be appreciated. It would also be interesting to know what kinds of enterprises run by members of the ethnic-minority groups were being fostered under the Government's Urban Programme and whether they were functioning properly.

35. Commenting on the supplement to the tenth report (CERD/C/172/Add.16) concerning the dependent territories administered by the United Kingdom, he said that to state that there was no racial discrimination in certain territories did not meet the Committee's requirements, nor did the absence of statistics on racial origin in the cases of the Cayman and Falkland Islands. The Convention apparently did not form part of the domestic legislation of the territories and could not be directly invoked before the courts. It had been stated that in case of doubt the laws of the territories must be interpreted in accordance with international law, including the provisions of the Convention, but was that enough? Would not specific legislation incorporating the Convention in the domestic law of the territories be more useful?

36. Mrs. SADIQ ALI said that the reports should have contained examples of acts regarded as racially discriminatory and consequently punishable under criminal law. That would have been a great help as the report of the Commission for Racial Equality was devastating and it would be enlightening to have information regarding action taken to combat racial discrimination.

37. She would like to know the position of the Race Relations Act vis-à-vis the Education Act of 1980. Racial discrimination in education was illustrated by the fact that, after resisting for one year, the Kirkless Council in West Yorkshire, on 12 July 1988, had acceded to demands by a group of white parents that their children should be sent to schools of their choice. The parents had refused to send their children to Headfield Primary School, where 85 per cent of the children were Asians, Gujaratis and Muslims. The main objection was that the school neglected Christian values and culture through undue emphasis on Asian culture. The parents had filed a case in the

High Court seeking the right to choose schools for their children. The Council had changed its stand, mainly because the issue had been blown out of proportion by the local and national media, enabling ultra-nationalists and racist groups to have a field day. The religious division and political strife in Northern Ireland had been strengthened by the provision of separate schools for the children of Catholics and Protestants, thus emphasizing the principle of segregation, which negated the multiracialism of British society.

38. It had also been reported that in 1980 the Government of Mrs. Thatcher had proposed legislation to give individual parents the right to choose schools and to determine whether such schools should continue to be governed by a council or be under independent management financed by the national Government. If that report was correct, she would like to know the results of the legislation. It would seem that the Education Act of 1980 had been used in such a way as to subvert the Race Relations Act of 1982, which prohibited racial discrimination. She would welcome clarification.

39. Mr. Michael Day, Chairman of the Commission for Racial Equality, was reported to have stated on 23 June 1988 that black people were confronted with many inequalities in all areas of life and that unemployment was a major contributory factor, the rate of unemployment for blacks being twice that for whites. Unemployment had reached 60-77 per cent in some London boroughs. The Commission had also stated that racial harassment was widespread, but that its terror was not fully understood and therefore not freely countered by the authorities and the general public. That would seem to call for a further strengthening of action under article 7 of the Convention.

40. Housing continued to be a big problem. A survey by the Chartered Institute of Public Finance and Accountancy had said on 11 January 1991 that, on the basis of the Government's own figures, the annual price of keeping families in bed and breakfast was twice as high as the cost of putting them in council homes; but the Government would not build new council homes because of its dogmatic hatred of local authority housing. Had that policy changed since Mrs. Thatcher had been succeeded by Mr. Major? According to the Institute, families had to wait 11 months on average for a permanent home. In some of the hostels it had visited, it had found that 25 families were sharing a bathroom. She welcomed the appointment of a special Minister for the depressed areas in question and would like to know what role the Minister would play in accelerating progress.

41. The United Kingdom Home Secretary had announced that the Government was committed to building bridges between the white majority and the ethnic minorities. She would like to know what steps were being taken in that direction.

42. In paragraph 19 of the tenth report, it was stated that the total ethnic-minority population had increased in the United Kingdom. She would like to know the extent of the decrease in the rate of immigration into the United Kingdom. Following the adoption of the new Immigration Bill, children born in the United Kingdom had lost the automatic right to citizenship and families had been torn apart by being denied the right to join husbands, wives or parents in the country.

43. An official spokesman had said that there were 13,900 people in the Indian subcontinent awaiting a decision on their application for entry clearance at the end of 1987. They had been waiting in India for decades after being uprooted from their homes in East Africa. The United Kingdom Government's promise to send more immigration officers to India had not been kept, or else there would not have been such a backlog. As a result, many newly-married couples had been separated for as long as two years. She would like to know how many applicants had now obtained clearance.

44. Mr. RESHETOV said that the United Kingdom reports were distinguished by a clear desire on the part of the Government to provide the Committee with full information on the true situation in the area of interest to the Committee. Problems had not been covered up, and the questions put to the United Kingdom delegation by the country rapporteur and other speakers constituted clear evidence of the Committee's wish to understand the situation in the United Kingdom. The comments on Northern Ireland contained in paragraph 5 of the tenth report (CERD/C/172/Add.11) were refreshingly frank, expressing the United Kingdom Government's view that the division between the majority and minority communities in Northern Ireland was due to political and religious reasons rather than racial. The report went on to describe at some length a very broad range of legislative and practical measures designed to deal with existing problems. By way of contrast, the Committee had seen how other major countries had stated a position of principle in their reports but had described no attempts to solve existing problems, whether ethnic or religious. Some of those countries had sent large delegations to the Committee but had managed to ensure that they avoided answering most of the important questions. The approach of the United Kingdom was quite different and demonstrated the country's clear wish to continue the constructive dialogue with the Committee and to provide full information.

45. The CHAIRMAN, speaking in a personal capacity, congratulated the United Kingdom delegation on the high quality and comprehensive nature of its reports and on its continuing constructive dialogue on the implementation of the Convention. His only comment was that in the United Kingdom there still appeared to be a very large number of acts of racial violence, the number having increased significantly in 1990 notwithstanding the positive measures taken by the Government. It would be of interest to the Committee to learn what the United Kingdom Government thought of that situation and to what it was attributed. In what ways was the Government trying to improve the situation?

46. Mr. SHERIFIS associated himself with all those members who had commended the United Kingdom delegation for its comprehensive and constructive description of the situation in that country and its unfailing desire to continue the dialogue with the Committee. He particularly welcomed the analysis of the population by ethnic origin contained in paragraphs 14-16 of the eleventh report.

47. He had noted that there was no reference in the report to articles 3 and 4 of the Convention; article 4 had been dealt with in previous reports and action on article 3 had also been taken in the past. Important recent developments in the world would eventually lead to convergence on the issue covered by article 3.

48. Mr. SONG Shuhua congratulated the United Kingdom Government on two excellent reports which were fully consistent with the guidelines. The detailed answers to questions raised in connection with previous reports indicated the continuity of the Government's dialogue with the Committee. That continuity was further reflected in the fact that the statistics in the eleventh report represented an improvement on those contained in the tenth.

49. Paragraphs 34 and 35 of the tenth report provided detailed descriptions of action taken by the authorities to combat racial harassment and violence. Previous reports had contained no details of which ethnic groups had been victimized, but the eleventh report stated that members of the Asian ethnic group had been the chief sufferers. He would like to know why that was so and whether it was possible that such attacks were organized.

50. The size of ethnic groups in dependent territories was in many cases very small, and he would like to know how the educational levels of the population were estimated in those territories. Some of the islands were too small to have a proper educational system. What was the situation when children had finished primary school and might have to go elsewhere in order to obtain education at higher levels? Thereafter did they return home and, if not, what was done to promote higher education in the territories?

51. Mr. ABOUL-NASR, on a point of clarification, asked why the United Kingdom Government had decided to report on its dependent territories under article 9 rather than under article 15 of the Convention. Might it be the view of the United Kingdom Government that some of those territories were part of the United Kingdom and did not fall within the scope of article 15?

52. Paragraph 3 of the section of the tenth report (CERD/C/172/Add.16) on the Falkland Islands stated that the population was racially homogeneous. Twenty years previously, however, a portion of the resident population had not been of British stock, and he wished to know whether those former inhabitants were allowed to return to the islands.

The meeting was suspended at 11.55 a.m. and resumed at 12.15 p.m.

53. Mr. FRIES (United Kingdom), replying to questions and comments by Committee members, said that his authorities would examine the records of the meeting carefully. Any points on which his delegation was unable to respond at the current session would be taken into account in preparing the twelfth periodic report.

54. His Government would comply with Mr. Sherifis' request for further demographic information. Regarding population change, an important point to be borne in mind was that, while migration continued to be an important factor, birth and mortality data played an increasingly large part in the changing demographic composition of the larger ethnic-minority communities. That was particularly true of the West Indian community, which had been established for longer than communities from the Indian subcontinent, with the result that the pattern of births and deaths was increasingly resembling that of the rest of the population. Return migration was also a significant factor; although he was unable to give figures, some people from the Caribbean region who had worked in the United Kingdom were now choosing to return to

their countries of origin on retirement. The 1991 census would yield up-to-date information, which would be provided to the Committee. In that connection, the forthcoming census would include a specific question about ethnic origin, since the census planners had concluded that an accurate assessment of the pattern of the establishment of minority communities could not be based on birthplace information alone, as had previously been the case. Since questioning about ethnic origin was a sensitive matter, extensive consultations and trials had been conducted in order to formulate a set of questions reconciling acceptability to respondents with the need for accuracy. Although the question had given rise to some controversy, the Government believed that the most practical balance had been struck. The consultations had been held in close cooperation with the Commission for Racial Equality (CRE) and ethnic minority organizations.

55. The legal provisions concerning indirect discrimination were complicated. Great care had been taken, however, to ensure that the Race Relations Act of 1976 and the Sex Discrimination Act of 1975, as well as similar provisions relating to Northern Ireland, provided much the same legal protection. He was therefore surprised at Mr. Wolfrum's comment that the Sex Discrimination Act was narrower in application than the Race Relations Act. As far as he was aware, the only provision to which that might apply was the provision for preferential treatment for women in training organized by employers.

56. In reply to the question asked by Mr. Wolfrum about the interpretation of the provision regarding indirect discrimination, he said that his Government's commitment to the Convention was absolute, but under the 1976 Act, in cases where a requirement or condition disadvantaged a particular racial group as compared with other racial groups, the person or entity applying the requirement or condition must prove that it was justifiable. He agreed that the concept of justifiability was a difficult one to define; its interpretation depended largely on case law. Once the requirement had been shown to be justifiable, it remained for the court to decide whether such evidence overrode the discrimination suffered by the claimant. He could cite the example of height requirements for particular occupations, such as the police force. The long-standing requirement that police officers should be taller than a certain minimum height had been a controversial issue on the grounds that it discriminated against groups with a lower average height. That restriction had now been removed. The Government was pursuing its dialogue with the CRE on the provisions of the 1976 Act in the light of interpretations given by courts; the effectiveness of the legislation on indirect discrimination was one of the issues that was high on its agenda.

57. In reply to questions about Northern Ireland, he assured the Committee that his authorities would reflect carefully on its comments. The Government's legislative policy was directed towards what it regarded as the practical ills of society in the United Kingdom, with the result that over the years race relations legislation had been developed in Great Britain, whereas in Northern Ireland the focus had been on what was seen as a religious

community divide, in the belief that the problem was best addressed in terms of legislation against religious, rather than racial, discrimination. The law had been strengthened recently, with the reinforcement of the powers of the Fair Employment Agency. He would, however, convey to his authorities the Committee's views about the demonstrative effect of legislation. He would also transmit Mr. de Gouttes' request for detailed information about participation in the judiciary in Northern Ireland.

58. A number of inner cities initiatives, described in the reports, had been developed at different times as various departments had sought to address the problems of inner cities more effectively. In reply to the comment that there had been a proliferation of such initiatives, which had indeed given rise to some criticism in the country itself, he said that the Government was addressing the vital question of coordination. He would argue that a wide range of initiatives was needed because they pursued different objectives. For instance, the Safer Cities Programme described in the tenth and eleventh reports was specifically targeted at crime reduction, although it should clearly be coordinated with Task Force efforts, which were primarily concerned with economic regeneration. Coordination of human resources was ensured by the involvement of local authorities and local communities, including representatives of ethnic-minority communities, in the project teams. The Urban Programme was a source of funding for all initiatives, and the City Action Teams ensured central government coordination between the various departments and programmes. He agreed that there might be a need for greater clarity and improved communication. A substantial amount of information, for instance about Task Force projects, was available and would be provided to the Committee if it so wished. It was perhaps too soon to say whether all the initiatives had been effective, but they were being continuously monitored, with the assistance of consultants, in order to obtain feedback. A consultant's report on achievements under the Inner Cities Initiative was expected in the near future and would be provided to the Committee at its request.

59. On the subject of local authorities, one of the features of the British system of devolved responsibility was that no regular information was received about the situation in local authority areas and would have to be specifically requested. Regarding Liverpool in particular, although it had been the subject of important measures, he did not believe that the situation had changed significantly, and the problems, not the least of which were its structural economic difficulties, remained. As reported, the CRE had conducted investigations in several areas. He would reply subsequently to questions about the CRE and the way in which it provided information about its findings, but could inform the Committee that there had been CRE follow-up to the questions involving the Westminster City Council and the South Manchester health services. He was unable to provide any further information about nursery school trainees.

60. In England and Wales, there were 1,394 officers from ethnic-minorities in service in October 1990, representing over 1 per cent of total police strength; that clearly fell far short of the proportion of those communities in the total population (nearly 5 per cent), even more so in terms of the population of the large cities. It should be said, however, that their number had increased by 286 since the end of 1987, which might be an encouraging sign. Furthermore, as reported in paragraphs 27-30 of the eleventh report, the Home Office was cooperating closely with the police forces, which recruited independently, to improve the situation. The focus of attention was not only on recruitment but also on retention; the Government was keenly aware of the need to employ ethnic-minority police officers.

The meeting rose at 12.45 p.m.

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Thirty-ninth session

SUMMARY RECORD OF THE 908th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 18 March 1991, at 3 p.m.

Chairman: Mr. SHAHI

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Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Tenth and eleventh periodic reports of the United Kingdom of Great Britain and Northern Ireland (*concluded*)

Submission of reports by States parties under article 9, paragraph 1, of the Convention (*continued*)

The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Tenth and eleventh periodic reports of the United Kingdom of Great Britain and Northern Ireland (CERD/C/172/Add.11 and Add.16, CERD/C/197/Add.2) (concluded)

At the invitation of the Chairman, Mr. Fries and Mr. Campbell took seats at the Committee table.

1. Mr. FRIES (United Kingdom), referring to Mr. Wolfrum's comment that the United Kingdom might have underestimated the problem of racial attacks and harassment, said that the figures indicated in the eleventh report had been based on a study covering the past 10 years. His Government was nevertheless aware of the difficulty involved in obtaining comparable statistics. Thus, the classification of an incident according to whether it had a racial element was often controversial. Moreover, efforts to ensure that racial incidents were dealt with seriously, particularly by systematically drawing attention to them, might lead to a statistical increase in the number of cases. In any event, the important thing was not to discuss whether the situation had improved or not, but to consider the measures taken to prevent that type of attack and, in that connection, he hoped that the report submitted gave the impression that his Government, the police and other institutions were taking the problem seriously. Mr. Wolfrum had also quoted the Commissioner of the London Metropolitan Police, Sir Peter Imbert, as having stated that racially motivated crime in the capital had risen by 60 per cent in the first quarter of 1989. That information did not, however, cover another problem, which was just as thorny; the involvement of the various ethnic groups in crime as a whole.

2. The legislative provisions relating to incitement to racial hatred, which had been strengthened in 1986, now applied to intent to incite racial hatred, as well as to conduct or publications which might provoke racial hatred. The United Kingdom also drew a distinction between conduct which might lead to attacks or disturbances of the peace and the expression of an opinion for that purpose. Physical attacks came under criminal law itself.

3. Animosity between ethnic groups was a regrettable feature of mixed societies and the United Kingdom was not unaffected by that problem.

4. In reply to Mr. Song Shuhua, who had asked why Asians from the Indian sub-continent were the particular target of racist attacks, he said that the explanation might be the greater difference in culture, religion and language of the Asian as opposed to the Afro-Caribbean communities, if it was accepted that difference was a factor that could lead to racism and xenophobia.

5. He fully agreed with Mrs. Sadiq Ali, who had pointed out that education was an important factor in lessening racial tension. Thus, the Education Reform Act which had been promulgated in 1988 had introduced the idea of a national curriculum. That was of particular relevance to the Committee's work in that the recruits to the National Curriculum Council and the Schools' Examination and Assessment Council require them in exercising their functions

to take accounts of the ethnic and cultural diversity of British society and the importance of promoting equal opportunities for all pupils regardless of ethnic origin and gender. As to Mrs. Sadiq Ali's question concerning parental choice and segregation in education, he said that his Government was trying to give parents an opportunity to choose among different schools and that such choice was based on considerations relating to instruction. Some schools did, of course, have a large proportion of pupils of a particular origin, but that was more a reflection of demographic factors than of a deliberate choice. As to the role of community organizations, which could be significant, since they could create links between the different racial groups, local voluntary bodies which had recently been renamed Race Equality Councils had expanded their activities in cooperation with the Commission for Racial Equality.

6. With regard to the implementation of article 3 of the Convention, which was not dealt with in the report, he said that the United Kingdom repudiated apartheid.

7. Mr. CAMPBELL (United Kingdom) said he regretted that, because of the lack of time, his Government had been unable to submit an addendum to the eleventh periodic report. That gap would be filled as soon as possible.

8. Replying to Mr. de Gouttes' question concerning the compilation of complete demographic statistics, he said that he would bring that point and, in particular, the comments on the Turks and Caicos Islands to the attention of the competent secretariat. With regard to the legislation of dependent territories, the Constitutions of Anguilla and Montserrat had been amended in 1990 to include provisions on discrimination. The Constitution of the Cayman Islands was under review. He would draw the attention of the competent legal advisers to the question of his Government's reservation concerning the application of the Convention to Fiji.

9. Replying to Mr. Song Shuhua's question concerning schools in small dependent territories, he pointed out, by way of example, that, for a school-age population of slightly more than 2,000 pupils, Anguilla had six primary schools and one secondary school. Beyond that level, instruction was given in universities in the Caribbean region. In the Falkland Islands, compulsory education up to the age of 16 was available locally and, after that, students studied in the United Kingdom. In addition, 13 itinerant teachers taught in remote rural areas. Fellowships were also made available to persons from dependent territories continuing their studies outside the Caribbean region.

10. Since Mr. Aboul-Nasr had asked under which article of the Convention the United Kingdom was submitting the part of its tenth report (CERD/C/172/Add.16) on the dependent territories administered by the United Kingdom, he recalled that his Government's position had not changed since 1987, when it had explained its point of view on the matter in a letter which had been addressed to the Chairman of the Committee and a copy of which he could make available to the experts.

11. In reply to Mr. Aboul-Nasr's second question, he said that the population of the Falkland Islands had fluctuated in the past 20 years depending on the economic situation. Since full employment was practically guaranteed, some of

those who had emigrated, especially to New Zealand and Europe, had returned to the Falkland Islands. The relevant figures would be indicated in the next report.

12. Mr. FRIES (United Kingdom), replying to a question concerning the measures taken against the British National Party, said that the United Kingdom's policy was to punish the unlawful acts which the members of that party might commit rather than to institute proceedings against the party itself.

13. With regard to the treatment of delinquents belonging to ethnic minorities, the Prison Department offered prison staff a special race relations training programme. The disproportionate number of prisoners belonging to ethnic minorities did not necessarily reflect discrimination against them. That problem required a much more detailed analysis of the offences committed and the machinery leading to the indictment of those responsible. An act was being prepared in Parliament to strengthen the judiciary's powers and equip it with the resources to provide better treatment for persons belonging to ethnic minorities.

14. In reply to a question by Mrs. Sadiq Ali concerning immigration and family reunion, he said that about 20,000 spouses and 9,000 children, as well as many other relatives, had been authorized to settle in the United Kingdom in 1989. The entry visa requirement which had been imposed in 1986 had been intended to ensure that entry into the country was in keeping with the Immigration Rules. Family reunion and the settlement in the United Kingdom of children who had come to join their parents had been facilitated by certain technical advances, such as the DNA test, which made it possible to determine relationships with certainty. He did not have any specific figures on waiting times for applications for settlement, but could confirm that they had decreased.

15. Referring to polygamy, he said that the Government made a very clear-cut distinction between family law and the Immigration Rules, under which a polygamous man could enter United Kingdom territory with only one of his wives, who had to be at least 16 years old.

16. In reply to a question by Mrs. Sadiq Ali, he said that, under the Nationality Act 1981, only children born of parents settled in the United Kingdom could be granted British nationality *jure soli*. He explained that, since three quarters of the members of ethnic minority groups had British nationality, their children automatically acquired that nationality and that was why minorities accounted for an increasingly larger share of the British population.

17. With regard to the employment situation, it was true that the high unemployment rate for people from the ethnic minorities remained disproportionately high, though this had improved somewhat. Though racial discrimination was undoubtedly a factor, it was not the whole explanation, structural factors played a part. In the 1950s and 1960s, some sectors of the economy, textiles, in particular, had relied heavily on foreign labour and it was precisely those sectors that were the hardest hit by the crisis.

18. In the case of housing, the survey conducted by the Housing Corporation (para. 88 of the eleventh report) had shown that, in 1989-1990, 10 per cent of new low-cost dwellings had been allocated to members of ethnic minorities. The Housing Corporation explained that that proportion was higher in areas where ethnic minorities were heavily represented.

19. In reply to Mrs. Sadiq Ali's question concerning the homeless, he said that ethnic minorities were not the only groups affected. In the past few years, the Government had been trying to ensure that persons renting low-cost dwellings could become property owners.

20. With regard to discrimination in housing, he drew Mr. Wolfrum's attention to the fact that the code of practice relating to rented housing (para. 85 of the eleventh report) would not enter into force until 1 May 1991.

21. Replying to a question by Mr. Wolfrum, he said that industrial tribunals were composed of three members, a chairman and a representative of each of the two parties and that they were not tribunals in the strict sense of the term, since they held informal hearings and the presence of a lawyer was therefore not necessary.

22. The Commission for Racial Equality could order a person guilty of acts of racial discrimination to cease such acts. It could also satisfy itself that such a warning had been heeded.

23. In reply to a question by Mr. Wolfrum, he said that access to social security depended on residence and that racial discrimination therefore played no significant role in that regard.

24. The Bill referred to in paragraph 108 of the eleventh report had been adopted in November 1990 and the seven radio stations to which the Independent Broadcasting Authority (IBA) had granted licences were all operating and were widely listened to by the various ethnic minorities for which they catered.

25. The Government was very anxious to ensure the independence of the Commission for Racial Equality and therefore did not want it to take part in the preparation of its reports. It nevertheless continued to work closely with the Commission.

26. In conclusion, he affirmed that the United Kingdom would continue to work actively to combat racism and racial discrimination.

27. Mr. YUTZIS requested the representative of the United Kingdom to explain the meaning of the last sentence of paragraph 12 of the tenth report (CERD/C/172/Add.11), which stated that, in Northern Ireland, the Fair Employment Agency's "investigations span the public and private sectors although the greater impact has been in the public sector". Did that mean that more investigations had been conducted in the public sector or that the investigations in that sector had been more effective than those in the private sector? Paragraph 55 of the tenth report stated that there had been significant growth in self-employment and private business activity among all

ethnic groups. Did the United Kingdom Government consider that a positive development? He also noted that members of ethnic minorities who did not find jobs often resorted to the black economy.

28. Mr. FRIES (United Kingdom) said he agreed that resorting to work on the black economy might be the result when an unemployed person was unable to find a job.

29. His Government considered the growth of self-employment to be very positive and encouraged the establishment of small private businesses, particularly by members of ethnic minorities.

30. He could not answer Mr. Yutzis' first question straight away. He could only say that Northern Ireland was a region with particular economic problems and that its public sector was therefore relatively important.

31. The CHAIRMAN, speaking as a member of the Committee and referring to paragraph 17 of the eleventh periodic report (CERD/C/197/Add.2), said that, if the objective of the integration of ethnic minorities and their full participation in the life of the society to which they belonged was to be achieved, those minorities had to have the feeling that they enjoyed equal protection before the law. That was, however, not the case, since the Anglican community benefited from protection in the event of blasphemy against its religion. That might cause feelings of alienation among ethnic minorities of the Muslim faith. It could also not be maintained that the right to freedom of expression was absolute, since restrictions on it were provided for by article 18, paragraph 3, of the International Covenant on Civil and Political Rights. Even British churchmen had considered that there was some discrimination de jure against members of religions other than the Anglican religion and that steps should be taken to enable members of a religious community who considered that their religion had been insulted to take legal action. One way of guaranteeing equality would be to repeal the existing law against blasphemy. The United Kingdom Government would, however, still have an obligation to take the special measures of protection provided for by article 2, paragraph 1, of the Convention.

32. Mr. FRIES (United Kingdom) said he recognized that there was a danger that members of the Muslim community might feel alienated and it was a matter of great concern to the British authorities, especially following the controversy to which "The Satanic Verses" had given rise. The Muslim community in the United Kingdom had set up an Action Committee which had initiated a dialogue with the authorities concerning the legislative guarantees that might be appropriate. Of course, everyone must exercise his right to freedom of expression responsibly. The question whether the best way to protect the feelings of members of religious groups was to adopt an act prohibiting any insult to a religion was a difficult one that warranted further consideration. The act prohibiting blasphemy which protected the Anglican religion was still in force, but hardly ever applied. Three out of five of the members of a committee set up six years earlier to review that act, which came under criminal law, had considered that it should be repealed.

33. The CHAIRMAN thanked the United Kingdom delegation for the very full replies it had given to the questions asked.

Mr. Campbell and Mr. Fries (United Kingdom) withdrew.

34. Mr. WOLFRUM, country rapporteur, said that the United Kingdom reports and annexes had provided very detailed and in-depth information on the situation with regard to racial discrimination in the United Kingdom. It was also commendable that no attempt had been made to present the existing situation in the United Kingdom in a more favourable light: rather, the Committee's attention had been drawn to the areas where the United Kingdom Government still saw a need for improvement and the submission of programmes and projects designed to achieve that objective was therefore all the more convincing.

35. The United Kingdom should make increased efforts to improve the situation of members of ethnic minorities with regard to education, employment, housing and economic standing. Other steps relating in particular to criminal prosecution should be taken to reduce significantly the number of incidents of incitement to racial hatred and racially motivated attacks.

36. It should nevertheless be noted that the United Kingdom Government had done a great deal to strike a fair balance between the interests of the various components of its multi-ethnic society. Those efforts were fully in keeping with the objectives of the Convention on the Elimination of All Forms of Racial Discrimination.

37. The CHAIRMAN said he took it that Mr. Wolfrum's evaluation was accepted by the Committee. The Committee had thus completed its consideration of the tenth and eleventh periodic reports of the United Kingdom (CERD/C/172/Add.11 and Add.16 and CERD/C/197/Add.2).

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 9, PARAGRAPH 1, OF THE CONVENTION (agenda item 3) (continued)*

38. The CHAIRMAN invited the Committee to consider the two draft resolutions submitted by Mr. Banton.

39. Mr. BANTON suggested that the Committee should first consider the draft resolution relating to the universalization of the Convention, in which Mr. Garvalov had suggested that, in order to strengthen the operative part, the words "which is one of the stated priorities of the international community in the endeavour to establish respect for and observance of human rights and fundamental freedoms" should be added after the words "racial discrimination".

40. Mr. ABOUL-NASR said that he had no objection to the adoption of the draft resolution, but noted, with regard to the last preambular paragraph, that the fact that a small number of States had not acceded to the Convention did not prevent it from being universal because, according to such reasoning, no

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* Resumed from the 900th meeting.

instrument would be universal, not even the United Nations Charter. Secondly, in the operative paragraph, he was not sure what the words "which have not yet done so" referred to. The aim was to encourage States to accede to the Convention, but it was not expressly stated in the draft resolution.

41. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee decided to adopt the draft resolution, as amended by Mr. Banton.

It was so decided.

42. Mr. BANTON said that amendments had been proposed to the other draft resolution, which contained two operative paragraphs. In referring to the English text, the only one available, some members of the Committee had pointed out that the term "behindhand" in the second preambular paragraph was not commonly used in draft resolutions and had suggested that it should be replaced by the term "late".

43. Mr. Garvalov had proposed that the first operative paragraph should state that such delays prevented the Committee from being able to evaluate efforts to combat racial discrimination in the various States and from assessing global trends. He himself would like a few minutes to polish that wording.

44. Mr. ABOUL-NASR, referring to the second operative paragraph, said that he did not understand the meaning of the words "to consider ways by which all States may be brought to", which he thought should be deleted. The Secretary-General would thus be called upon to encourage the States parties to fulfil their obligations.

45. Mr. LAMPTEY said that Mr. Banton's original intention had been to find ways of forcing States parties to fulfil their obligations and that it was the responsibility of the States parties themselves to find such ways, since the Committee's appeals and reminders had gone unheeded. It would be enough to say that the fact that the States parties did not fulfil their obligations weakened the Convention and he did not think that there was any need for the amendment proposed by Mr. Garvalov.

46. Mr. BANTON said that he shared Mr. Lamptey's view. However, in order to take account of the opinion expressed by Mr. Garvalov, he proposed that the following wording should be added at the end of the first operative paragraph: "in that they prevent the Committee from considering developments in such States and assessing global trends". That would strengthen the paragraph and make it possible to go beyond the interpretation given to the Convention thus far.

47. The CHAIRMAN said that, in the amendment just proposed, the words "and assessing global trends" should be deleted so that the draft resolution would not go beyond the scope of the Convention.

48. Mr. LAMPTEY said that it was unnecessary to add anything to the first operative paragraph.

49. Mr. de GOUTTES said that he preferred the amendment to the first operative paragraph proposed by Mr. Banton because it reflected the two

reasons why the consideration of reports was important: it made it possible to consider the existing situation in States and to identify the most general trends. In order to take account of the comments just made, however, the Committee might adopt the following compromise wording: "in that they prevent the Committee from considering developments in such States and assessing general trends in all of those States".

50. Mr. GARVALOV thanked Mr. Banton for having taken account of his suggestion and Mr. de Gouttes for the wording he had proposed. The idea of "global trends" had been referred to in the talks which the Committee had held with the Under-Secretary-General for Human Rights. Moreover, the Committee dealt with global trends when it assessed the review of its work by the Third Committee of the General Assembly.

51. Mr. RESHETOV said that he also supported the proposal by Mr. Banton, as slightly amended by Mr. de Gouttes. However, he had some doubts about the words "effective implementation of the Convention"; it was known what the word "implementation" meant in international law and the amendments by Mr. Banton and Mr. de Gouttes departed slightly from that meaning; one solution would be to include them in a separate paragraph.

52. Mr. YUTZIS said that, in his view, the words "effective implementation" gave the impression that States which did not submit reports made the Committee's work ineffective. In order to avoid that wrong impression, the words "full implementation" should be used. Moreover, to help reconcile points of view concerning the first operative paragraph, he proposed the following text:

> "Expresses the opinion that such delays are an obstacle to the full implementation of the Convention in that they prevent the Committee from assessing compliance with the Convention in such States".

53. Mr. WOLFRUM said that he understood Mr. Reshetov's hesitation because the impression might be created that, if the Committee could consider all reports, the Convention would be fully implemented, but that was obviously not the case. In his view, the "global trends" referred to by Mr. Banton in his amendment went beyond the scope of the Convention. Going beyond that instrument was sometimes justified, but doing so in a resolution of a technical nature was not. The wording proposed by Mr. Yutzis for the paragraph as a whole would be better.

54. Mr. LAMPTEY said that he could agree to Mr. Banton's amendment up to the words "in such States", but he had trouble with the words "global trends" and even the words "general trends". Those in favour of such wording might be thinking of the talks that had taken place with the Under-Secretary-General, but he stressed that the reports of States parties were all different: for example, the report of Ghana had nothing to do with the reports of Nigeria and Togo. However, the amendment proposed by Mr. Yutzis, with the words "full implementation", would be acceptable and it seemed to be in keeping with Mr. Garvalov's original intention, which had been simply to explain why delays by States parties were an obstacle to the implementation of the Convention.

55. Mr. ABOUL-NASR said that the idea of "global trends" should not cause problems for any member of the Committee, since article 9, paragraph 2, of the Convention stated that "The Committee shall report annually ... to the General Assembly ... and may make ... general recommendations ...". In order to formulate general recommendations, account had to be taken of general or global trends. If that wording continued to give rise to doubts, however, it might be placed in a preambular paragraph so that a consensus might be reached.

56. Mr. SONG Shuhua said that, in his view, the text of the first operative paragraph as contained in the draft resolution distributed would be satisfactory, provided that the words "full implementation" were used.

57. Mr. de GOUTTES said that he could support Mr. Yutzis' wording, but he stressed that the Committee's objective was not only to assess the situation in the States parties, but also to identify general trends on the basis of the consideration of their reports.

58. Mr. GARVALOV confirmed that he shared the point of view of the members who were in favour of referring to global or general trends.

59. Mr. RESHETOV said he feared that the words "full implementation" might make people think of an ideal and unfeasible situation and thus give rise to endless interpretations: it would therefore be better to retain the word "effective".

60. Mr. BANTON proposed that, in order to promote consensus, the following compromise text should replace the first operative paragraph:

> "The Committee on the Elimination of Racial Discrimination,
>
> ...
>
> Noting that such delays prevent the Committee from considering compliance with the Convention in such States".

The second operative paragraph would then become the only operative paragraph.

61. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee adopted the proposal by Mr. Banton.

It was so decided.

62. Mr. ABOUL-NASR recalled that he had proposed the deletion of the words "to consider ways by which all States may be brought to" in what had become the single operative paragraph because he had found their meaning unclear. He pointed out that most of the States which did not submit reports also did not pay any contributions. Did the Committee really have any way of forcing them to fulfil those two obligations? What types of constraint could be proposed at a meeting of the States parties to the Convention?

63. Mr. LAMPTEY recalled that the Committee was an instrument of the States parties. The Committee had already told the General Assembly time and again

that some States did not fulfil their obligations with regard to the submission of reports and the General Assembly had said as much in its reports and in several resolutions. The Committee had already taken initiatives to remedy that situation and had thus decided to appoint experts to contact States parties whose reports were overdue. In reply to Mr. Aboul-Nasr's question, there certainly were ways of forcing a State party. For example, a meeting of States parties could decide in a resolution that a State whose reports were overdue would not take part in its work any more. It was empowered to take a decision along those lines and to amend the Convention to provide for penalties. It was known that all States paid the contributions they owed under the Charter because, if they did not, they were liable to penalties. The Committee could bring that type of remedy to the attention of the meeting of States parties.

64. Mr. WOLFRUM drew Mr. Aboul-Nasr's attention to the other option provided for in article 22 of the Convention, which stated that "Any dispute between two or more States parties with respect to the interpretation or application of this Convention ... shall ... be referred to the International Court of Justice ...". The non-submission of reports related to the "application" of the Convention. Thus, although the procedure under article 22 was unlikely, it was a possibility.

65. Mr. ABOUL-NASR said that the remedy in the event of the non-implementation of the Convention of which Mr. Wolfrum was thinking was provided for in article 11 of the Convention, since article 22 dealt with disputes between States parties. Although he would not press his amendment, he still had some doubts.

66. Mr. RESHETOV said that the non-implementation of the Convention called for measures of international responsibility that were provided for by international law. Those were measures which the international community could take and which were already known. In order not to give the impression of departing from existing international law, it might be better if the operative part of the draft resolution used the terms found in article 9 of the Convention concerning the submission of reports.

67. The CHAIRMAN said that the Committee was reaching a consensus on what was now the single operative paragraph of the draft resolution. He nevertheless suggested that, in order to settle the remaining differences of opinion, the Committee should wait until the next meeting to adopt the text as a whole.

The meeting rose at 5.50 p.m.

CERD/C/SR.909
22 March 1991

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Thirty-ninth session

SUMMARY RECORD OF THE 909th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 19 March 1991, at 10 a.m.

Chairman: Mr. SHAHI

CONTENTS

Submission of reports by States parties under article 9, paragraph 1, of the Convention (*continued*)

Second Decade to Combat Racism and Racial Discrimination (*continued*)

The meeting was called to order at 10.20 a.m.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 9, PARAGRAPH 1, OF THE CONVENTION (agenda item 3) (continued)

1. The CHAIRMAN drew attention to the draft letter to be sent to the Ministers for Foreign Affairs of certain States parties whose reports were overdue. The draft letter read:

> "Sir,
>
> On behalf of the Committee on the Elimination of Racial Discrimination, I have the honour to refer to the International Convention on the Elimination of All Forms of Racial Discrimination, ratified by your country in/on _______, which requires periodic reports to be submitted every two years (article 9, paragraph 1) on the legislative, judicial, administrative or other measures adopted by the States parties to give effect to the provisions of the Convention. The last report of your country was received on _________, and discussed at the _________ meeting of the Committee on the Elimination of Racial Discrimination, in __________ 19__.
>
> Delays in reporting by States parties hamper the Committee in monitoring implementation of the Convention. For this reason, the Committee, at its 903rd meeting, on 14 March 1991, decided to review implementation of the Convention in your country based upon your last report and the consideration of it by the Committee. This review will be conducted in accordance with article 9, paragraphs 1 and 2, of the Convention and will form part of the Committee's fortieth session scheduled from 5 to 23 August 1991, at the United Nations Office at Geneva. The review will take place at a meeting to be held on __________, _________ August 1991.
>
> The Committee invites Your Excellency's Government to designate its representative(s) to participate in the above-mentioned meeting and to furnish the Committee with all relevant information. Such information may be submitted either in writing to the Centre for Human Rights, United Nations Office at Geneva, if possible by 30 June 1991, or in an oral presentation by the representative(s) of your country, or preferably both in written and oral forms, as is a common practice.
>
> Accept, Sir, the assurances of my higher consideration.
>
> Agha Shahi
> Chairman, CERD"

2. Mr. WOLFRUM explained that the draft letter was intended to reflect the discussion which the Committee had had on the matter, on the initiative of Mr. Aboul-Nasr. He himself and Mr. Ferrero Costa had been requested to draft the text, a task in which Mr. Banton had helped them. The draft letter was largely self-explanatory. Two minor amendments should be made. First, in the second sentence of the second paragraph the word "report" should read

"reports" and the words "of it" should read "of them". Second, at the end of the text the words "my higher consideration" should read "my highest consideration".

3. Mr. Aboul-Nasr had pointed out that a problem might arise in connection with the third paragraph. In it the Committee requested the State party to furnish "all relevant information", in order to give the State party as much flexibility as possible. Mr. Aboul-Nasr had considered that the Committee should request a report. However, there was not much time between now and August in which to prepare a proper report. Something would be better than nothing.

4. The CHAIRMAN said it should be indicated that in the third paragraph "all relevant information" meant information subsequent to the submission of the State party's latest report, which was the report the Committee was going to consider. He therefore suggested that the wording should be amended to read "all subsequent relevant information".

It was so agreed.

5. Mr. RESHETOV said that he had misgivings about the third paragraph. Some Governments might send representatives who would not provide the Committee with the information it required but merely state that they did not have the specialists needed to draft the report or were unable to submit it for some other reason. It might then be claimed that the sending of a representative was equivalent to submitting a report.

6. Mr. LECHUGA HEVIA pointed out that article 9 of the Convention called for the submission of a report, and not other kinds of information.

7. Mr. VIDAS said that the last sentence in the third paragraph needed to be redrafted. The word "either" should be deleted, and the words "or in an oral presentation" should be amended to read "and in an oral presentation". The words "or preferably both in written and oral forms, as is a common practice" should be deleted as unnecessary.

8. The CHAIRMAN suggested that the word "either" should be deleted and that the paragraph should end with the words "30 June 1991", since everything that followed was superfluous.

It was so agreed.

9. Mr. ABOUL-NASR associated himself with those members who had expressed caution concerning the use of the words "relevant information" instead of the word "report", which was what the Convention clearly required. He suggested that the Committee should request that the information be submitted to the Secretary-General of the United Nations, not to the Centre for Human Rights, in keeping with the wording of article 9 of the Convention.

It was so agreed.

10. The CHAIRMAN suggested that in that case the words "c/o Centre for Human Rights" should be inserted after the reference to the Secretary-General of the United Nations.

It was so agreed.

The draft letter, as amended, was approved.

11. The CHAIRMAN drew attention to a draft resolution proposed by Mr. Banton.

12. Mr. BANTON read out the following draft resolution:

> "The Committee on the Elimination of Racial Discrimination,
>
> Drawing attention to article 9, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination, under which the States parties to that Convention undertake to submit periodic reports every two years,
>
> Regretting that a number of States are seriously late in the submission of such reports despite many reminders,
>
> Noting that such delays prevent the Committee from considering compliance with the Convention in such States,
>
> Further regretting that appeals to States parties have had little effect,
>
> Calls upon the Secretary-General to bring to the attention of the States parties at their meeting the unfortunate consequences of these delays and to encourage the States parties to consider ways by which all States may be brought to fulfil their obligations under article 9, paragraph 1, of the Convention."

The draft resolution was adopted

13. Mr. SHERIFIS observed said that it made no difference whether the Committee adopted the draft resolution at its present session or at its next session in August 1991, since in either case the Secretary-General would submit it to the States parties at their meeting in January 1992. If the Committee adopted the draft resolution at its next session, it would have had the benefit of seeing how the new procedure for considering certain State party reports operated in practice.

14. The CHAIRMAN pointed out that the draft resolution had already been adopted, although any member could request its reconsideration at the next session. That having been said, he wondered whether it was appropriate for the Committee to "call upon" the General Assembly.

SECOND DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION (agenda item 7) (continued)* (A/45/443)

The proposed special meeting of States parties

15. Mr. BANTON, commenting on the idea that a special meeting of States parties should be convened during the period 1990-1993 to assess experience gained in the implementation of the Convention, originally suggested by Mr. Lamptey and referred to in paragraph 6 of the Committee's decision 1 (XXXIV), reminded the Committee that at a previous meeting members had been invited to reflect on any topics it might wish to put forward for discussion at the special meeting.

16. The CHAIRMAN noted that the Committee had already engaged in a preliminary discussion of the matter. It was now up to the Committee to decide what issues it would ask the States parties to consider and what documentation it could prepare for them. Account must be taken of the fact that the Committee would also be called upon to provide material for the preparatory committee for the World Conference on Human Rights. The Committee's earlier discussion had been inconclusive, and he needed to know whether or not members wished to continue consideration of the matter.

17. Mr. LAMPTEY recalled that he had originally made the proposal for the convening of a special meeting of States parties in his former capacity as Chairman of the Committee. The reason for drawing the matter to the Committee's attention was that the Secretary-General had outlined the idea in his report to the General Assembly on the action to be taken during the Second Decade. The decision to request a special meeting of States parties was, in fact, just one of the decisions taken by the Committee on the question of the Second Decade and the World Conference on Human Rights. Another decision had been that the Committee should, in the presence of its former Chairmen, hold a session in New York to evaluate its work, but it had not been possible to do so for lack of funds. In any case, the Committee had to consider what ideas it could place before the States parties, through the Secretary-General, at their special meeting. It might perhaps be better for members to think the matter over and for the Committee to take it up again at its next session.

18. The CHAIRMAN said the Committee should distinguish between the recommendation it had made at its thirty-fourth session for a special meeting of States parties, and the recommendation made by the Secretary-General in paragraph 46 (f) of document A/45/443 for a seminar to assess experience gained in the implementation of the Convention.

19. Mr. VIDAS said that of those two possibilities, he would favour a special meeting of States parties. However, he agreed that the best course would be to reflect further on the question and to take a decision at the Committee's August session.

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* Resumed from the 903rd meeting.

20. Mr. LECHUGA HEVIA pointed out if the Committee were to wait until August before deciding whether or not to extend the proposed meeting of States parties for a further day, the Secretariat might not have time to make the necessary financial arrangements.

21. The CHAIRMAN said he had been reminded by the Secretariat that the General Assembly would in any event need to endorse such a decision, since it alone was empowered to request States parties to extend of their meeting.

22. Mr. LAMPTEY pointed out that even if the Committee were to take a decision at the current meeting, its report would not come before the General Assembly until September or October.

23. The CHAIRMAN said he took it that it was the Committee's wish to defer until the August session any decision on a possible extension of the meeting of States parties. By that time, it would have learnt what action the Secretary-General proposed to take regarding the seminar.

It was so agreed.

Suggestions by the Under-Secretary-General for Human Rights for the Committee's future work

24. The CHAIRMAN drew attention to a paper containing a number of suggestions by the Under-Secretary-General for Human Rights for the Committee's future work. He suggested that the meeting should be suspended to allow time for the paper to be distributed.

The meeting was suspended from 11.10 a.m. to 11.25 a.m.

25. Mr. BANTON said the series of suggestions made by the Under-Secretary-General for possible action by the Committee were substantial ones and posed a significant challenge. One suggestion was that criteria or indicators be developed to measure progress in national action against racism. He himself believed that a suitable criterion where indigenous peoples and territorial minorities were concerned would be the extent to which equality had been achieved in respect of employment, education, health and housing. Where immigrant minorities were concerned, the criterion should be not only progress towards equality, but also progress towards integration, as measured by the extent of participation by those minorities in the country's political process. Indicators for such groups could thus include the percentage of their total number who exercised the right to vote; how far they voted for ethnic parties, and how far for national parties; the extent to which they were represented in Parliament, and, if under-represented, for what reasons; and finally, figures for inter-ethnic marriages or unions.

26. Mr. VIDAS said that while he found Mr. Banton's ideas interesting, he did not think the Committee could discuss them in depth simply on the basis of an oral presentation. Consideration of the question should be deferred until the August session.

27. Mr. SONG Shuhua pointed out that it would not be possible to use a single set of criteria to measure progress, since standards in health, education and

housing would vary significantly according to the level of development achieved by the country concerned. He, too, felt that discussion should be deferred until the next session.

28. MR. LECHUGA HEVIA shared that view. A further suggestion by the Under-Secretary-General was that thought be given to how national action against racism could be improved. He himself believed that that could best be done by making use of the media, not only to publicize any racial incidents that might occur, but also to increase public awareness of the injustices in society that gave rise to such incidents. The Committee might enlist the services of journalists, notably those employed in the United Nations press services, or organize seminars. What was crucial was to make contact with ordinary people and to get them to understand the real meaning of racial discrimination.

29. Mr. YUTZIS said that merely to discuss in a general way such a large number of specific issues would mean that everything was dealt with superficially and no proper conclusions reached. The Committee should first decide on a method of work. He accordingly suggested that members could put forward ideas on the various suggestions made by the Under-Secretary-General; those views would be recorded by the Secretariat, and distributed to members after the meeting, to allow time for serious reflection. As a next step, each member could prepare a paper setting out his or her own views, and those papers would provide the background documentation for the August session. At the session itself, small informal working groups could be set up to deal with each of the various suggestions made. A properly defined working procedure was essential if the Committee was to arrive at any valid conclusion.

30. Mr. LAMPTEY said it was important to be clear how the criteria and indicators proposed by Mr. Banton were to be utilized. Was it the intention that States parties would, for example, provide information on numbers of inter-ethnic marriages in their reports as an indication of progress? The value of such an indicator would vary greatly in different countries since not all States took a positive view of inter-ethnic marriages. The arguments in favour of the various proposed criteria should be set down in written form, so that the Committee could consider them at its next session and decide whether or not they would be useful.

31. Mr. de GOUTTES said that the question of indicators was very important, since it was on the basis of indicators or criteria that the Committee was able to monitor progress in the implementation of the Convention. While he agreed with Mr. Lamptey that an analysis was necessary before conclusions could be drawn, an initial discussion would be useful. He concurred with Mr. Banton that priority should be given to demographic data, and with his suggestion that territorial, indigenous and immigrant minorities should be dealt with separately. Subject to further discussion on the methodology to be adopted, he would propose two other criteria. The first concerned the religious expression of minorities, and the second concerned equality of treatment of minorities in the criminal justice system, in other words, *vis-à-vis* the police and the courts.

32. He proposed that the question of criteria, which was one of substance, should be included in the agenda for the Committee's forthcoming meeting with the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

33. Mr. ABOUL-NASR said that no amount of launching of decades, publishing of books and articles, and holding of seminars and meetings could get to the root of the problems of racial discrimination faced by many countries, especially in the third world. Regarding criteria, the standards expected of States parties were very much based on, and influenced by, those prevailing in the places where the Committee met and on the Committee members' own, largely similar background. There was a tendency to forget that the majority of people in the world did not share that background, were unaware of their rights and duties under the Convention, and had no experience of many of the institutions and facilities to which reference was made therein. The same criteria could not be applied to all countries. As the Committee was aware, various forms of racial or ethnic discrimination continued to cause great suffering in many parts of the world, and a greater understanding was needed of different problems and aspirations.

34. In order to address the problem more directly, he suggested that the Committee should hold one of its sessions away from its normal venues, in Africa, for example. If the experiment were successful, subsequent sessions could be held in Asia and Latin America. Members could acquaint themselves with the local situation through direct contact with those directly concerned, both in the country and in the region. The session could focus on consideration of reports from States parties in the region. It would also have the merit of familiarizing the authorities and the general public in the State and the region concerned with the objectives of the Convention and with the Committee's purposes and functions.

35. There was also room for improvement in the means currently used to inform people about what was meant by racial discrimination and about their rights and duties under the Convention. The information provided by the Department of Public Information was inadequate. In many cases, large sectors of the population were illiterate. The production of videos might have more impact than publications. Co-operation should be established with the local media, especially television. The education system also offered scope for innovative ideas, with creative exercises in the classroom rather than high-level contacts with education ministries.

36. He appreciated the possible financial implications of holding a session in the field, but would strongly urge that consideration be given to the idea as an initial experiment.

37. Mr. YUTZIS expressed concern about the wide scope of the discussion, which was not conducive to a focused debate on the important issues under consideration. He had proposed a methodology and would welcome comments or alternative suggestions. Both Mr. de Gouttes' and Mr. Aboul-Nasr's comments had convinced him of the need for a different approach. For instance, while he agreed with the former that religion was a key issue, it was clear that situations varied widely from one country and one region to another and that the same indicators could not be used across the board. The process of

secularization in the countries of the north and in his own region, for instance, was a case in point. Such issues required careful analysis, followed by collation of the views expressed.

38. Mr. WOLFRUM said, by way of general comment, that it should be remembered that the Convention, and indeed the Committee itself, had an educational purpose and not some sort of punitive function. The Committee's aim was to eliminate racial discrimination to the extent possible; that being so, it could hardly state that there should be less discrimination in some areas than in others, which would be the case if different criteria were used. Different yardsticks might be applied, for instance, in reporting techniques, but not in setting standards.

39. The Committee should ask itself why the principles set forth in the Convention were not upheld throughout the world, and how it could help to remedy the situation. The answer lay in education. He endorsed Mr. Aboul-Nasr's suggestion, adding that a session in the field would greatly enhance that educational role. The people in the country concerned could be directly reached through local media. He himself - and no doubt other Committee members - would be prepared to give talks and hold discussions with local communities outside Committee meeting hours. He would support the idea of holding the meeting in Banjul, which had the necessary facilities. He agreed with Mr. Aboul-Nasr that the holding of such a session would be mutually beneficial. Moreover, numerous forums existed for the publication of books or articles and the holding of seminars, whereas only the Committee could actually be on the spot, spread the news and receive direct feedback. The pluralistic composition of the Committee added to its credibility and insight. From a procedural point of view, the holding of a session in the field could appropriately come under the heading of "technical assistance", upon which the Committee had already taken a decision.

40. The CHAIRMAN commended Mr. Banton and other members for their contributions to the discussion on criteria. Mr. Aboul-Nasr's excellent suggestion to hold a session in another region should be explored further, with due regard for the financial implications.

41. Mr. de Gouttes' suggestion that the question of criteria should be placed on the agenda for the Committee's meeting with the Sub-Commission, was a good one, but careful consideration should be given to adding an item to what was already a heavy agenda for a one-day meeting.

42. Mr. de GOUTTES considered that Mr. Aboul-Nasr's suggestion and Mr. Wolfrum's comments warranted further discussion. Meanwhile, without prejudice to Mr. Yutzis' proposals, he wished to revert to the question of criteria, and to suggest that Mr. Banton might prepare a paper incorporating his own proposals and any further suggestions emerging from the Committee's discussion. The Committee would thus have an advance copy of the proposals as a basis for its discussion at the August session. If the Committee decided to include it in the agenda for its meeting with the Sub-Commission, the paper might also be conveyed to that body as a basis for an initial, if brief, exchange of views on a subject of mutual interest.

43. The CHAIRMAN requested Mr. Banton to prepare a paper as suggested by Mr. de Gouttes. He took it that the Committee wished to include the question of criteria in the agenda for its meeting with the Sub-Commission.

It was so agreed.

44. Mr. ABOUL-NASR suggested that Mr. Banton might bear in mind the different criteria which could be applied in different parts of the world. In connection with the reference to different standards, it was his view that existing standards were well accepted. It might perhaps be better to devote some attention to means of ensuring that those standards could be met.

45. Mr. YUTZIS said that the Committee must first decide, in the light of its experience over the past 20 years whether the points raised in that connection by the Under-Secretary-General were valid or not, with a view to eliminating those which were not practicable. With regard to future developments, he suggested that the Committee might consider meeting outside Geneva at some point. There were a number of questions which must be discussed in connection with the future work of the Committee and small working groups might be set up for that purpose so that, at the Committee's August session, it would have available to it a modest amount of material which could then be developed into a comprehensive overview. He therefore suggested that the Committee should have a short general discussion and that subsequently small working groups should be set up to prepare brief papers for the August meeting.

46. Mr. BANTON said that, in his view, the type and development of the Committee's activities and a survey of the positive impact of those activities had already been covered. No further consideration was therefore needed. If the Committee was to hold a brief general discussion from the standpoint of the Convention, the discussion might be divided into three parts. In the first place, consideration might be given to conclusions relating to article 3, which dealt with racial policies of segregation and apartheid. On that issue the Committee could say that, as it did not receive reports from the States concerned, it could not draw general conclusions and that the issue should therefore be left to the Sub-Commission.

47. Secondly, the Committee could draw conclusions concerning racism viewed from the standpoint of State policy, but that aspect was not covered by the Convention. There was, however, a reference in article 4 (a) to racist activities. There were in all societies individuals with psychopathological tendencies who might find a solution to their own difficulties by expressing hatred of minorities. In times of political and economic tension, the activities of such individuals could be very dangerous and those were the very circumstances in which the rule of law was threatened and legal sanctions were at their weakest. Much would then depend on the political will of Governments. In that connection the Committee could say that it was currently collecting from States parties more quantitative data about prosecutions in pursuance of article 4. That was an area where a Third Decade might represent an opportunity to compile information regarding State action in connection with racist activities in order to encourage more forceful action by those States which were slow to use their powers in that field.

48. The third area where the Committee might attempt to draw conclusions was racial discrimination and, in his view, that was where the Committee was at its strongest. Again, however, he wished to differentiate between indigenous territorial and immigrant minorities; he hoped that the Committee would make the point that racial discrimination was different from racism and that, whatever might be thought about the causes of racism, the causes of racial discrimination were very varied and it was not therefore possible to draw general conclusions about racial discrimination. What the Committee could draw general conclusions about, however, were the means of protection against racial discrimination and the extent to which they were effective. The Committee's general conclusions would therefore have to relate to legislation and its effectiveness. Earlier speakers had referred to education as an important means of protection but, at the current stage of the Committee's experience with the Convention, there was less likelihood of its being able to come to any general conclusions, bearing in mind the wide variations in experience in that field. As to the positive impact of the Committee's activities, reference would have to be made to the importance of article 14.

49. On the question of future developments in the Committee's work, the Committee should look at the period up to the year 2003, by which time things which were not currently possible might have become possible. That was an area in which the Committee could appropriately talk about how it could be more effective if it was enabled to report on States parties which had ratified the Convention but had not submitted an initial report, on those States which had acceded to but not ratified the Convention, and on those which had not acceded to it. In the twenty-first century, the Committee might be more effective if it had the power to appoint a special rapporteur who could collect additional information on States in cases when it thought that the information it already possessed was not sufficient. It would be appropriate to mention future developments of that kind.

50. He was somewhat puzzled as to why the Under-Secretary-General had drawn a distinction between the overall role of the fight against discrimination in United Nations programmes and the impact of racism on enjoyment of other rights, and improving international action against racism.

51. While thinking of activities for the future, the Committee must give rather more consideration than usual to States' reasons for not making the article 14 declarations, for not ratifying the Convention and for being hesitant in dealing with the Committee. States were subject to many pressures and the Committee must do more to try to understand how States viewed minority problems if it was to have an effective of dialogue with them.

52. On the question of improving national action against racism, he endorsed what Mr. Aboul-Nasr had said about the United Nations Department of Public Information, which did not seem to be as imaginative as it might be in that field. Information on the activities of the Committee and other treaty-monitoring bodies must be made more readily available in countries where United Nations information centres were located.

53. Those were the main suggestions which he would like to submit as a stimulus to thought before the August meeting. He was rather less impressed by some of the other suggestions made by the Under-Secretary-General. In

particular, he doubted whether the suggestion for a compilation of all the documents relating to one country would represent value for money, because the situation and circumstances in countries changed so rapidly that such compilations would soon become outdated. He hoped that, at some stage, the Committee would consider whether it could make a contribution to a Third Decade by publishing further studies on the implementation of further articles of the Convention.

54. Mr. WOLFRUM welcomed the guidelines proposed by Mr. Banton. He agreed in particular that the Committee need pay no further heed to the type and development of its activities and to a survey of the positive impact of its activities. Mr. Aboul-Nasr's proposal on future developments should be included. He doubted whether the Committee should concentrate on States which had not ratified the Convention. It already had enough work dealing with those which had ratified.

55. He did not agree that there was a connection between the overall role of the United Nations human rights programme and improved international action. The former point would be taken up with the Sub-Commission at the joint meeting and represented a very important problem which must be tackled at both the international and national levels. The approach at the national level would be more difficult as the Committee had already seen the different approaches of different States illustrated in the reports which it had considered during its current session. The possibilities for international and national action must be looked into further. Improving international action was also of importance in connection with future developments in the Committee's work.

56. He did not agree with Mr. Banton's comment on territorial minorities. Gypsies, for example, were not a territorial minority.

57. Mr. YUTZIS considered that the Committee was under an obligation to comment and reach general conclusions on racism and racial discrimination. The basis of such a discussion must be the principle of the indivisibility of human rights and would also involve both the International Covenants. The discussion had centred on one of those Covenants only and he proposed that, on the basis of the concept of indivisibility, the Committee should devote attention to such issues as elections, democracy and political parties, which were important for any evaluation.

58. Emphasis should be placed on the link between racism and development, and on the importance of racism in relation to the absence of development. The situation was likely to worsen in countries of the third world because of the linkage between discrimination, racism and poverty.

59. The linkage between racism and religion was also very important. Religion could be used as a way of legitimizing racism and racial discrimination. In 1992, the five hundredth anniversary of the so-called discovery of America by Christopher Columbus would be celebrated. America had, of course, existed before Christopher Columbus; its discovery was only a European concept. As a result of the process of evangelization of Latin America by the Conquistadors, the pre-Columbian culture of Latin America had been subjugated by the religious culture of Europe, which had legitimized

the conquest and oppression of the Latin American peoples. It must be recognized that such a development could be repeated elsewhere. There was also a linkage between nationalism and religion: when nationalism and religion joined forces, the results could be explosive.

60. It was important that the Committee should consider suggestions regarding its future work. He would like to link that question with the type and development of the Committee's activities, because the Committee would need to discuss its method of work. It would be desirable to continue the joint meetings with the Sub-Commission and to consider how those meetings could be improved and whether the Committee should maintain its ties with other treaty bodies. Consideration should also be given to possible improvements in the rapporteur system. The Committee might also wish to consider whether the working group should become a standing group of the Committee; that question also required discussion with a view to determining methods of work.

61. In connection with possible improvements in international and national action, the Committee should also devote attention to the important question of regional activities and structures. There was already an inter-American Commission on Human Rights and a European Court of Human Rights, but there were very few institutions in Asia.

The Committee rose at 1.05 p.m.

CERD/C/SR.910
24 April 1991

ENGLISH
Original: FRENCH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Thirty-ninth session

SUMMARY RECORD OF THE 910th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 19 March 1991, at 3 p.m.

Chairman: Mr. SHAHI

CONTENTS

Second Decade to Combat Racism and Racial Discrimination (*continued*)

Proposals by the Under-Secretary-General for Human Rights concerning the future work of the Committee

Consideration of copies of petitions, copies of reports and other information relating to Trust and Non-Self-Governing Territories and to all other territories to which General Assembly resolution 1514 (XV) applies, in conformity with article 15 of the Convention

Reports of the working groups responsible for examining the documentation submitted to the Committee under article 15 of the Convention

The meeting was called to order at 3.15 p.m.

SECOND DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION (agenda item 7) (continued)

Proposals by the Under-Secretary-General for Human Rights concerning the future work of the Committee

1. The CHAIRMAN invited the members of the Committee to continue their consideration of the proposals made by Mr. Martenson at the 904th meeting.

2. Mrs. SADIQ ALI expressed agreement with the proposal made by Mr. Banton in his introductory statement concerning the development of indicators and criteria in order to measure progress made in the fight against racism in the various countries. She also endorsed the proposal by Mr. Aboul-Nasr and Mr. Song Shuhua to introduce two sets of criteria, one for the developed and the other for the developing countries. Moreover, like Mr. Aboul-Nasr, she thought that it would be useful to hold Committee sessions in the field, but doubted that the Committee's financial resources would permit such an initiative; she agreed with Mr. Wolfrum that the Convention had an educational purpose, which implied a stricter application of article 7, and thought, as Mr. de Gouttes had suggested, that the question of the criteria to be applied might usefully be discussed with the Sub-Commission.

3. Mr. SHERIFIS agreed with Mr. Aboul-Nasr's proposal that Committee sessions should be organized in the field - in Africa, Asia or Latin America, for example - but expressed concern about the financial implications of that suggestion.

4. On the subject of the proposal by the Under-Secretary-General for Human Rights that the Committee might make a survey of the positive impact of its activities, he noted that the Committee had adopted a large number of resolutions in the 20 years of its existence and that the experts might reflect on how they had been followed up. It would indeed be useful to see whether the decisions taken had helped to promote the objectives of the Convention and, if not, to consider what could be done to ensure that they were not a dead letter.

5. Mr. VIDAS said that he did not agree with the opinion expressed by Mr. Banton at the previous meeting that the Committee should draw a distinction between indigenous territorial minorities and immigrant minorities. The classification of minorities might be facilitated if the Committee took into account the work done by the Sub-Commission in drafting a declaration on the rights of minorities.

6. Mr. ABOUL-NASR thought that it would be useful if Mr. Martenson's proposal that organizations like the European Community should become a party to the Convention and that contacts should be established with such organizations in order to fight racism was extended to other regional organizations.

7. The CHAIRMAN specified that the Convention was open for signature or accession by States and not regional organizations. However, the Committee

might contemplate procedures for liaison or co-operation with regional organizations as part of a concerted effort to combat racial discrimination.

8. Mr. SHERIFIS said that he was strongly in favour of the proposal to enter into consultations or co-operative relations with the European Community. However, it was not certain the latter had taken the decision to become a party to the Convention or that it could be granted that status. Article 17 stipulated that "The Convention is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to this Convention". Moreover, he doubted whether the European Parliament, which had recommended that the European Community should become a party to the Convention, had the authority to make such a decision since, as far as he was aware, that decision-making power rested with the Council of Ministers of the Community. With regard to the Committee member who might make contact with the Community in that connection, he said that Mr. de Gouttes would be in a good position to take on such a mission and report on the matter to the Committee at its next session in August 1991. Finally, it would be useful for relations of consultation and collaboration to be established with other regional organizations such as the Organization of American States, the Organization of African Unity or the Council of Europe.

9. Mr. de GOUTTES endorsed the comment by the Chairman and Mr. Sherifis that neither article 17 nor article 18 of the Convention would authorize accession by the European Community to the Convention, and that it would be more appropriate to consider relations of co-operation with that organization.

10. Mr. WOLFRUM said that he was in favour of co-operation not only with the European Community but also with any other body with competence in the field of human rights. In order to clarify the content of the European Parliament's recommendation, which the members of the Committee were discussing and which in any case was not binding, he read it out.

11. Mr. LAMPTEY agreed with Mr. Aboul-Nasr that the European Community could not acquire the status of party to the Convention. It was not in fact a matter of knowing how the Community might accede to the Convention, but what its contribution might be. If it had to submit a report, would that report be different from those already submitted by countries like Germany or the United Kingdom, for example? It seemed more appropriate for the Committee to opt for an exchange of documents or information on the question of racial discrimination with organizations like the European Community. Furthermore, he doubted whether there would be any point in designating a member of the Committee to maintain liaison with those organizations.

12. Mr. VIDAS said that he was in favour of establishing relations involving co-operation and information exchange with the European Community and other organizations.

13. The CHAIRMAN confirmed that there was no question of the European Community or any other regional organization becoming a party to the Convention.

14. He invited the members of the Committee to give their views on the two suggestions made, namely the exchange of information and documents with regional organizations and the designation of a member of the Committee to make contact with the European Parliament.

15. Mr. GARVALOV said that priority should be given to liaison with the European Parliament.

16. The CHAIRMAN suggested that Mr. de Gouttes should be entrusted with the task of contacting the European Parliament, ascertaining its views and reporting back to the Committee at its next session.

17. Mr. de GOUTTES said that he would willingly carry out that assignment; he took it that he was to make contact with the European Parliament informally and not on behalf of the Committee.

18. Mr. YUTZIS agreed to the idea of requesting Mr. de Gouttes to make contact with the European Parliament and to report back to the Committee at its next session. It was clear that, if the Committee were to approve that initiative, Mr. de Gouttes's mission would be an official one.

19. Mr. ABOUL-NASR said that he would prefer an informal contact with the European Parliament since, to his knowledge, the Committee had not received an official request from the European Community. He therefore recommended that the Committee should request Mr. de Gouttes to look into the kind of co-operation that might be entered into with the Community and consider, at a later stage, extending such contacts to other regional organizations.

20. The CHAIRMAN suggested that the Committee should authorize Mr. de Gouttes to make contact with the European Parliament.

It was so decided.

21. The CHAIRMAN asked the members of the Committee if they also wished to request other Committee members to make similar contacts with other regional organizations.

22. Mr. YUTZIS said that he did not think such an initiative would be appropriate at the current stage of the Committee's deliberations.

It was so decided.

23. The CHAIRMAN, referring to the suggestion by the Under-Secretary-General for Human Rights that it might be useful for the Committee to prepare its report in such a way as to bring together in separate documents all the documents relating to the different countries, reminded the Committee that, at the previous meeting, Mr. Banton had expressed the view that there would be nothing to gain from such a procedure since that kind of publication quickly became outdated.

24. The proposal to broaden the mandate of national bodies competent to receive and consider petitions under article 14 of the Convention might be the subject of a recommendation to be drafted at the Committee's next session.

It was so decided.

25. The CHAIRMAN suggested that Mr. Martenson's proposal concerning the appointment of national ombudsmen against discrimination should be considered at the Committee's next session.

It was so decided.

26. The CHAIRMAN suggested that, as recommended by the Under-Secretary-General for Human Rights, the Committee should take note of the decision of the Commission on Human Rights at its most recent session that the topic for discussion in 1993 under the Programme of Action for the Second Decade to Combat Racism and Racial Discrimination would be "Global survey on the extent of dissemination of the International Convention on the Elimination of All Forms of Racial Discrimination".

It was so decided.

CONSIDERATION OF COPIES OF PETITIONS, COPIES OF REPORTS AND OTHER INFORMATION RELATING TO TRUST AND NON-SELF-GOVERNING TERRITORIES AND TO ALL OTHER TERRITORIES TO WHICH GENERAL ASSEMBLY RESOLUTION 1514 (XV) APPLIES, IN CONFORMITY WITH ARTICLE 15 OF THE CONVENTION (agenda item 6)

Reports of the working groups responsible for examining the documentation submitted to the Committee under article 15 of the Convention

The Committee decided to defer consideration of the question to its next session.

The meeting rose at 4.05 p.m.

CERD/C/SR.911
25 March 1991

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Thirty-ninth session

SUMMARY RECORD OF THE 911th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 20 March 1991, at 10 a.m.

Chairman: Mr. SHAHI

later: Mr. VIDAS

CONTENTS

Action by the General Assembly at its forty-fifth session (continued):

(b) Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights (General Assembly resolution 45/85) (continued)

Second Decade to Combat Racism and Racial Discrimination (continued)

Organization of work (concluded)

The meeting was called to order at 10.15 a.m.

ACTION BY THE GENERAL ASSEMBLY AT ITS FORTY-FIFTH SESSION (agenda item 2) (continued):*

(b) EFFECTIVE IMPLEMENTATION OF INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS, INCLUDING REPORTING OBLIGATIONS UNDER INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS (GENERAL ASSEMBLY RESOLUTION 45/85) (continued)

Proposal for a general recommendation on indirect discrimination in accordance with article 9, paragraph 2, of the Convention

1. Mr. WOLFRUM said that there were no longer many cases of national laws or regulations which openly pursued a discriminatory objective. There were, however, many cases in which laws and actions which in themselves had no discriminatory purpose had the effect of creating or perpetuating racial discrimination. Indirect discrimination of that type was prohibited by article 1, paragraph 1, and article 2, paragraph 1 (c), of the Convention. It was therefore likely that a greater proportion of the Committee's time in future would be taken up by evaluating the reports of States parties as to whether there existed measures which had such discriminatory effects and therefore gave rise to indirect discrimination.

2. Examples of indirect discrimination included the case of a State which had electoral legislation which limited the right to vote to persons who could read or write. In addition, the Constitutional Court of Portugal had ruled that article 81, paragraph 2, of the General Service Regulations of the National Republican Guard was unconstitutional because it represented discrimination against gypsies. In the United Kingdom, the Commission on Racial Equality had ruled that a sign outside a hotel stating that no travellers were permitted represented discrimination against gypsies. A further example would be that of an employer or headmaster who insisted upon all his employees or pupils, regardless of their background, wearing nothing on their heads; he was thus not offering genuine equality to an orthodox Sikh who wished to wear a turban.

3. In his view, a general recommendation on indirect discrimination was needed for three reasons. First, pursuant to article 9, paragraph 2, of the Convention, the Committee was empowered to make suggestions and general recommendations based on the examination of reports and information received from States parties; the Committee had not yet taken such action because it was overloaded with reports and had had only one session a year in which to conduct its business. Second, considerable discussion would be needed before such a recommendation could be drafted. The Human Rights Committee had a similar task under article 40 of the International Covenant on Civil and Political Rights, and had done a substantial amount of drafting on the question. Third, a general recommendation would serve the purposes of

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* Resumed from the 900th meeting.

providing an interpretation of the Convention and giving guidance to States, while at the same time clarifying thinking about implementation of the Convention.

4. Mr. BANTON endorsed Mr. Wolfrum's views and referred to the use of language tests as being indirectly discriminatory. That had been true in the case of Griggs v. Duke Power in the United States, where it had been found that the use of such tests as a condition of employment was discriminatory in that it required a higher standard than was needed and thus bore more harshly on blacks. Indians had been denied jobs at British Steel Corporation following tests of their ability to read safety manuals. The same workers had been employed satisfactorily in the past with the same firm but the new condition had been introduced while they had been absent from the country. The court had found that the application of language tests in the particular circumstances was discriminatory. Such cases strengthened the need to adopt a recommendation along the lines of Mr. Wolfrum's proposal.

5. Mr. SHERIFIS sought further clarification of Mr. Wolfrum's proposal and referred to the hypothetical case of a multiracial country which contained two ethnic groups representing one third and two thirds of the population respectively. In accordance with the established rules, the groups shared equally in all positions in the country. That would mean that one ethnic group benefited from discrimination while the other suffered since the first group would have twice as many opportunities for employment as the second. He asked how such a situation would be covered by Mr. Wolfrum's recommendations.

Mr. Vidas took the Chair

6. Mr. WOLFRUM said that the point raised by Mr. Sherifis could be covered by including wording such as the following in the recommendation: "Discrimination in fact occurs when, although a statute, regulation or measure treats all persons equally, a condition or requirement applied has a negative effect on members of a specific ethnic group since it is more difficult, or even impossible, for them to meet the said condition or requirement." Article 1, paragraph 4, of the Convention provided for the possibility of affirmative action but such situations of course required an equitable balance.

7. Mr. BANTON said that the case mentioned by Mr. Sherifis was an example of direct, not indirect, discrimination. The action in question had been taken with a definite purpose.

8. Mr. SONG Shuhua welcomed the proposal by Mr. Wolfrum. The Committee was often faced with situations which raised not legal points but de facto questions. He cited the case of an overseas Chinese with a degree in medicine from a good university who was not permitted to practise in Hong Kong because he did not speak English. It could not be said that that represented a case of legal discrimination but in practice there was discrimination.

9. Mr. de GOUTTES welcomed Mr. Wolfrum's proposal, which would help the Committee to make progress in interpreting the Convention. The text of article 1, paragraph 1, and article 2, paragraph 1 (c), did not speak of the direct or indirect effects of discrimination and therefore made no distinction

between the two. The Committee should discuss what it considered to be indirect effects. In the following two cases, the question would arise as to whether direct or indirect discrimination was involved. First, what would be the position in the case of certain religious communities that had to register in order to be recognized after having previously been banned. Such action could be interpreted as being liable to produce discrimination. And secondly, the inclusion of ethnic origins in population tables could be interpreted as an action liable to produce discrimination as an indirect effect. The Committee would need to determine how far it could go in interpreting negative effects. He was therefore very interested in Mr. Wolfrum's proposal as a means of helping the Committee in its efforts at interpretation.

10. Mr. ABOUL-NASR said he was not ready to take a position on the question, which, in his view, was not covered by the Convention. On the question of the protection of minorities, there were occasions when it was the majority which required protection, as in certain countries where the minority was in power and the majority was discriminated against.

11. He felt it would be undesirable to try to draw a distinction between direct and indirect discrimination as that might complicate matters. If the Committee attempted to produce a definition, it might find that that definition did not apply to all situations in all countries and its hands might be tied. To take an example, a country might require a certain level of knowledge of the national language as a condition for the exercise of political rights. Would such a requirement always be discriminatory in essence? If a candidate in an election did not have a basic knowledge of the language how could he participate in drafting legislation, for instance? A certain standard was required in some cases, but that requirement might be interpreted as discriminatory.

12. Mr. YUTZIS said that the issue was both important and complex. It was complex because discrimination in general and racial discrimination in particular operated through conscious and unconscious mechanisms. It was therefore difficult to legislate on the subject. It was true that, in the complex network of social relationships, it might be possible to identify with a fair degree of reliability all the loopholes used, both legally and illegally, to create conditions whereby discrimination could be exercised. For example, one State party report had talked of "lawful" and "unlawful" discrimination. Behind such phraseology lay hidden meanings. In Argentina, there were a number of indigenous communities, particularly in the interior, where the requirement for survival as a group was the degree to which they could form cooperatives. In order to do that, however, they had to meet legal requirements which, for them, were practically unsurmountable. From the strict legal point of view, no objection could be raised because the conditions applied to all; not everybody, however, could meet those conditions. In historical terms, the reasons why groups might not be able to meet conditions apparently equal to all represented either direct or indirect discrimination. Also in Argentina, hotels, dance-halls, cafes and other such establishments frequently had small print in their advertisements saying that the management reserved the right of admission. The law permitted that, but an objective analysis of specific decisions on who could be admitted and who could not would demonstrate many discriminatory attitudes and consequences. Likewise, similar requirements might be imposed on immigrants or emigrants.

Any positive measure which would help to prevent the loopholes of social reality leading to forms of discrimination would be useful. Mr. Wolfrum's proposal would represent an excellent starting-point.

13. Mr. SHERIFIS thanked Mr. Wolfrum and Mr. Banton for their clarifications; however, the matter under discussion concerned both direct and indirect discrimination. In reply to Mr. Wolfrum's comments about minorities, he said that the Committee was equally concerned with majority groups. In fact, its primary concern was with human beings in general, irrespective of the group to which they belonged.

14. Mr. Wolfrum's initiative was praiseworthy, and it was very useful for the Committee to air its views on so important a question in preparation for a discussion at the next session. Like Mr. Aboul-Nasr, he favoured a more comprehensive approach to the whole issue, rather than confining the discussion to one specific aspect.

Mr. Shahi resumed the Chair.

15. Mr. WOLFRUM, responding to Mr. Aboul-Nasr's comments, considered that a recommendation was certainly necessary. The intention behind the Convention, and the Committee's function, was to identify and combat not only actions whose purpose was discriminatory but also those which discriminated in fact. Some examples might illustrate that point. When Sweden's report had been discussed, the question had arisen of action by the State which had a discriminatory effect but had been justified on the grounds that it was not deliberately discriminatory. Another example was that of Canada. He had been told that the Canadian representatives, prior to consideration of their country's report, had sought informally to request the Committee not to discuss the Mohawk land dispute. However, the background to that case was central to the Committee's concerns, and the matter had in fact been raised. Thirdly, a case had arisen in his own country where, under pressure from certain religious communities, a law providing for certain procedures for slaughtering animals and prohibiting others had finally been repealed after a debate lasting six years. The law had not been intended to discriminate, but had in effect done so, since it had prevented certain communities from slaughtering animals for consumption according to their religious customs. In some cases, States parties' reports gave no information whatsoever about State practice, an example being that of Uruguay at the current session. He added that the examples mentioned did not necessarily reflect any ill-will on the part of the States concerned.

16. He took Mr. Sherifis' point that discrimination could in some instances be directed against a majority group, South Africa being an example. The final draft should not, therefore, refer only to minorities.

17. He agreed with previous speakers that the wording of a recommendation should not be unduly restrictive; the purpose of the discussion was precisely to enable members to express their views so as to gain a deeper understanding of article 1, paragraph 1, and article 2, paragraph 1 (c), of the Convention, on the basis of which a more refined version of the text could be drafted for discussion at the next session.

18. Mr. LAMPTEY considered that Mr. Wolfrum's proposal was interesting and might prove useful, but was very premature. Interpretation of the Convention must be based on practice, in other words, on the Committee's consideration of reports and exchanges of views between the Committee and States parties. Over the years, a consensus would develop which could then form the basis of a general recommendation. He was reminded of a similar situation that had arisen over the interpretation of article 4, on which there had initially been sharply differing views, both within the Committee and between the Committee and States parties; however, a consensus had eventually emerged. That did not preclude a discussion, which in any case would have the merit of alerting the Committee to issues of indirect discrimination in States' reports and to what was meant by the word "effect" in article 2, paragraph 1 (c). Meanwhile, the situation must be allowed to evolve so that the Committee had before it enough examples of such effects to be able, after taking into account possible conflicts between them, to draft a recommendation that was widely applicable and would be followed.

19. Mr. YUTZIS said that indirect discrimination applied equally to advertising in the media and in that respect had a bearing on article 7 of the Convention as well. He was thinking in particular of the image of the "ideal woman" projected in some advertisements, which had a discriminatory effect on those women who endeavoured to live up to that image but were unable to do so. Any purported ideal had the twofold effect of encouraging emulation while discriminating against those who failed to meet the standards set. Even though such effects could not be attacked on legal grounds, they did contain elements of discrimination. Mr. Wolfrum's proposal had the merit of sharpening the Committee's perception of the meaning of articles 1 and 2, and also article 7.

20. That the issue had arisen now was not mere chance; the discussion had been prompted by practical experience and the Committee's awareness of a problem of increasing significance. In reply to Mr. Lamptey's comment that the proposal was premature, he would say that the prematurity stage was a time for preparation; in due course, when the fruit was ripe, it would be picked. He therefore welcomed the discussion on the subject and suggested that, after due reflection, the Committee should return to it at its next session.

21. Mr. GARVALOV said he was gratified to note that Mr. Wolfrum's proposal addressed the issue of the subtler forms of racial discrimination to which he himself had referred on a previous occasion. Although it seemed too early to adopt a decision at the current session, it was the Committee's duty to scrutinize the Convention for any loopholes to which States parties might resort when reporting to the Committee. He considered the wording suggested by Mr. Wolfrum to be sufficiently broad, although he would be in favour of a limitation clause relating to the public interest. Caution should be exercised in using the general term "discrimination", since the Committee's mandate was confined to racial discrimination.

22. The question of majorities and minorities was also a delicate one. The Republic of South Africa was not the only example. There were States parties in which a majority group in the population as a whole was a minority in a given part of the country, when individuals might be subject to discrimination

for failing to speak the local language, for instance. There were therefore excellent reasons for reflecting on Mr. Wolfrum's proposal in preparation for the summer session.

23. Mrs. SADIQ ALI said Mr. Wolfrum's proposal and the discussion showed clearly that the Committee must be vigilant in ensuring that the Convention was implemented fully, since loopholes might exist. Mr. Wolfrum had given some examples that had emerged from the consideration of States parties' reports; further examples would add to the Committee's perception of the scope of the problem. She would have no difficulty in supporting his proposal.

24. Mr. VIDAS welcomed a discussion on so important an issue. He concurred with the view that, in protecting a specific minority group from the indirect effects of discrimination, the consequences for those who did not belong to that group should not be neglected, and that the Convention offered protection to all human beings.

25. During the discussion, the Committee had moved towards a harmonization of different members' views, and he hoped that a consensus would emerge at the next session. He welcomed Mr. Wolfrum's offer to elaborate on the proposal before the next session, and would suggest that he should not only work on a general recommendation but also reflect on other suggestions or opinions that might be considered at that time.

26. Mr. SHERIFIS, summing up his position, said that Mr. Wolfrum's initiative was a good one and the exchange of views had been very useful. He hoped that Mr. Wolfrum would take into account the various views expressed in the Committee and draft a revised text to be taken up at the August session.

27. Mr. de GOUTTES said that Mr. Wolfrum's proposal, which contained a definition of "discrimination in fact", might in some respects raise a problem of conflicting rights, in other words, a conflict between certain rights and the principle of non-discrimination. An example Mr. Wolfrum had quoted, concerning the wearing of headgear in schools, posed an acute problem in some countries, where the principle of secular education conflicted with the right of certain communities to wear their customary dress. Another case of conflicting rights had arisen in France, where certain persons had been prosecuted and convicted for practising excision on young children. The case had given rise to considerable debate about the conflict between respect for the physical integrity of the human being and freedom of religious practice. The question of conflicting rights should therefore be discussed when the Committee reverted to the issue at its August session.

28. Mr. ABOUL-NASR said he had a question for Mr. Wolfrum. If, for example, the Greek community in a city such as New York were to decide to form a social club to which non-Greeks were not admitted, would that constitute either direct or indirect discrimination under the Convention?

29. Mr. WOLFRUM, in reply, pointed out that article 5 (f) of the Convention required States parties to guarantee to everyone the right of access to any place or service intended for use by the general public, such as, for example, cafés or theatres. If such a club were to contain a public facility such as a

swimming-pool, there would be a case of clear-cut discrimination, but if the club's objective was to promote, say, traditional Greek folk dancing, no discrimination would be involved.

30. The discussion that his recommendation had provoked had been most fruitful and interesting, and he would certainly redraft it in the light of the views expressed, so that it could form a basis for further debate at the next session. He fully agreed that due time should be allowed for ideas to mature. He volunteered to help Mr. Lamptey in preparing a general recommendation on article 4.

31. The CHAIRMAN expressed appreciation for the creative approach shown by members. The Committee would look forward to the revised paper to be submitted by Mr. Wolfrum for further consideration at the August session.

SECOND DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION (agenda item 7) (continued)

Contribution by the Committee on the Elimination of Racial Discrimination to the work of the World Conference on Human Rights (continued) (General Assembly resolution 45/155)

32. The CHAIRMAN said that to avoid possible repetition, he would refresh members' minds on the views that had been expressed on the subject of the World Conference at the Committee's meeting on 11 March 1991. Mr. Aboul-Nasr had suggested that members might volunteer to prepare a paper for the next session on what the Committee might contribute to the Preparatory Committee for the Conference and eventually to the Conference itself. Mr. de Gouttes had agreed, while stressing that United Nations bodies should keep in close touch with national bodies such as government commissions or non-governmental organizations in submitting material. Mr. Ferrero Costa had proposed that the Committee be represented, both at the Preparatory Committee and at the Conference, by its Chairman, and had urged that members identify any topics they considered particularly important, taking care to find out what areas other human rights bodies were covering.

33. It had been agreed that the Committee would need to consult the Under-Secretary-General for Human Rights on the matter of the agenda for the Conference, since he had been made responsible for documentation. Mr. Ferrero Costa had proposed that special rapporteurs be appointed for each of the topics selected for inclusion in the agenda; their reports would be then combined into a single final report for presentation to the Conference. He himself, as Chairman, had suggested that the Committee might contribute a paper evaluating the racial discrimination situation at the national and international levels. Mr. Ferrero Costa had also suggested that a paper be prepared on the effectiveness of recourse procedures and mechanisms.

34. Mr. Houshmand, the representative of the Secretary-General, had confirmed that the Preparatory Committee would do the organizational and administrative work for the Conference, compile the agenda and decide on documentation. Mr. Houshmand had suggested that the Committee might contribute to the Conference by producing a review of its work. In that connection, he drew attention to paragraph 67 of the report of persons chairing human rights

treaty bodies (A/45/636), which stated that the work of the treaty bodies should be fully reflected in the Conference's agenda, and that a detailed evaluation of the work of those bodies should be prepared as part of the background documentation.

35. At the meeting of 11 March, Mr. Yutzis and Mr. Vidas had proposed that the whole subject be discussed at the August session and that Mr. Banton should circulate the relevant documentation. Mr. Banton himself had been strongly in favour of the Committee playing a lead role where the Conference was concerned.

36. He drew attention to paragraph 1 of General Assembly resolution 45/155, which listed the various objectives of the Conference. Lastly, he drew attention to the recommendation contained in paragraph 4 of the annex to resolution 1991/30 of the Commission on Human Rights, to the effect that the Preparatory Committee should consider how the World Conference and its preparatory process could work towards improving implementation of existing human rights standards and instruments.

37. Mr. LAMPTEY agreed that any final decisions on the matter would best be taken at the August session. For the present, a rapporteur could be appointed to prepare a paper listing a limited number of the most realistic ideas from the many that had been put forward. That paper could then be submitted at the forthcoming session.

38. Mr. WOLFRUM suggested that the rapporteur should take into consideration the other recommendations made in the annex to Commission resolution 1991/30. Paragraph 2, for example, urged that the Preparatory Committee should keep in view the equal importance and indivisibility of all categories of human rights, as well as the interrelationship between human rights, democracy and development. Paragraph 4 asked the Preparatory Committee to consider how the Conference could formulate concrete recommendations aimed at improving methods and mechanisms used by the United Nations in the field of human rights. Paragraph 9 called for a study of ways and means of strengthening governmental and non-governmental institutions at the national level aiming at the promotion of human rights; in that connection the Committee could introduce the idea of a human rights ombudsman. Paragraph 10 asked for recommendations regarding "further possibilities of improving the implementation of applicable international law through national legislation". Those were four subjects which could be included in the report to be compiled by the rapporteur.

39. The suggestion made by Mr. Aboul-Nasr was in fact covered by paragraph 7, which recommended that the Committee consider how to increase the impact and presence of the United Nations system, bodies and mechanisms in the field of human rights throughout the world.

40. Mr. GARVALOV said the forthcoming World Conference was an event of such importance as to warrant a very special contribution from the Committee. He would suggest, therefore, that apart from the report, a separate paper on the subject of international developments with regard to the elimination of racial discrimination should also be submitted.

41. Mr. BANTON said that since it seemed he had been designated to prepare a paper on the question for the August session, he would appreciate a little more guidance from the Committee as to what it should contain.

42. Mr. ABOUL-NASR suggested that Mr. Banton might, for example, draft a recommendation to the Preparatory Committee on the basis of the idea put forward in paragraph 8 of the annex to Commission resolution 1991/30, namely that the Preparatory Committee should consider holding meetings at the regional level in order to ascertain views in different regions on the promotion and protection of human rights. Mr. Banton's paper could express the Committee's willingness to participate actively in meetings of the Preparatory Committee and to consider ideas on how it could be of further help in eliminating discrimination.

43. The CHAIRMAN suggested that Mr. Banton might also take into account in his paper paragraph 1 of General Assembly resolution 45/55, which listed the objectives of the forthcoming World Conference. As well as the various ideas put forward at the current meeting, Mr. Banton could also take account of the need to develop greater cooperation and contact between the various human rights bodies.

ORGANIZATION OF WORK (concluded)*

Preparations for a joint session with the Sub-Commission on Prevention of Discrimination and Protection of Minorities

44. The CHAIRMAN said that, as he recalled, it had already been agreed that Mr. Wolfrum would prepare a paper for the joint session on the theme of conflicts between human rights, and that Mr. Ferrero Costa would deal with the subject of coordination between different human rights bodies to prevent overlapping. Mr. Yutzis would prepare material on the world situation with regard to racial discrimination. A further topic had been suggested by Mr. de Gouttes.

45. Mr. de GOUTTES said the subject he had proposed was that of criteria or indicators for assessing progress achieved in combating discrimination. Mr. Banton had already put forward a number of specific ideas on that question, and it would be helpful if he could prepare a paper on it as a basis for discussion at the joint session.

46. The CHAIRMAN invited suggestions as to how the work of the joint session might be organized.

47. Mr. ABOUL-NASR considered that in a joint session lasting only one day there would not be enough time for the presentation and discussion of papers. It would be better to have a general exchange of views on how the Committee

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* Resumed from the 890th meeting.

could best cooperate and exchange information with the Sub-Commission on matters of common interest. There should be no limitation on the number of speakers, since individual members would no doubt have their own views to express.

48. The CHAIRMAN pointed out that the Committee had already decided that designated rapporteurs should prepare papers for the joint session. Those papers need not be read out in full: they could be distributed in advance, and the rapporteurs could merely draw attention to the highlights.

49. Mr. LAMPTEY said that while the meeting would be a general one, it would need to have a focus, and that would be provided by the rapporteurs. He suggested that three papers might be presented by the Committee, and another three by the Sub-Commission. On the assumption that each rapporteur would speak for some 30 minutes, the session's morning meeting would be taken up by presentation of papers and the discussion could take place in the afternoon.

50. Mr. WOLFRUM said that if rapporteurs were merely going to draw attention to the highlights of their papers, they should not need to speak for more than 5 or 10 minutes.

51. Mr. ABOUL-NASR reaffirmed his opinion that at the joint meeting the Committee and Sub-Commission should focus on exchanging views on the experience of the two bodies and exploring areas in which they could co-operate. He did not think that there should be a third topic.

52. Mr. de GOUTTES said that the important question of criteria and indicators must be taken up with the Sub-Commission, since experience had shown that the criteria used in different bodies dealing with racial discrimination were not always the same. It would perhaps be premature to discuss the question at the first joint meeting with the Sub-Commission, but it should be broached at sequent joint meeting.

53. Mr. LECHUGA HEVIA pointed out that the Committee did not yet know the Sub-Commission's views on the organization of the joint meeting.

54. The CHAIRMAN recalled that, in his letter to Mr. Eide, the Sub-Commission's Special Rapporteur on the Second Decade to Combat Racism and Racial Discrimination, he had stated that the Committee would take up two topics at the joint meeting, namely, the conflict between the right to protection from racial discrimination and certain other fundamental rights and freedoms, and the question of racial discrimination in relation to the distinction between citizens and non-citizens. In the letter which he had received from Mr. Eide, the latter had suggested that the topics for consideration at the joint meeting should include: ways and means of coordinating action on common activities; emerging problems and trends involving racism; mutual assistance and questions of overlapping and duplication, for example, by asking Governments to report on similar questions dealt with by the Committee on the Elimination of Racial Discrimination.

55. At a previous meeting of the Committee, it had been decided that Mr. Wolfrum would prepare a paper on the conflict between the right to protection from racial discrimination and certain other fundamental rights and

freedoms, that the question of racial discrimination in relation to the distinction between citizens and non-citizens should be dropped, that Mr. Ferrero Costa would prepare a paper on ways and means of coordinating action on common activities and questions of overlapping and duplication, and that Mr. Yutzis would prepare a paper on emerging problems and trends involving racism. As Chairman he would therefore have to write another letter to Mr. Eide on the basis of whatever decision the Committee might take in the matter. He should be able to confirm, without giving names, that members of the Committee would produce papers on the three topics he had mentioned. Thus there would be three rapporteurs from the Committee and three from the Sub-Commission; 5 minutes for the rapporteurs to highlight points made in the papers, which would be circulated in advance, would hardly be enough, but 10 minutes should be sufficient.

56. Mr. GARVALOV said that while the Committee operated under constraints such as those imposed by the Convention, the Sub-Commission was not similarly restricted. The Sub-Commission was aware of the contribution made by the Committee, which in turn was interested in knowing how the Sub-Commission could help it. Perhaps the time had come for some international body to take up the task of drafting a definition of a "minority". At the joint meeting there would be no need to read out the papers submitted; a brief introduction by their authors would suffice.

57. Mr. YUTZIS said that, since it could hardly be expected that any of the topics would be exhausted in a one-day meeting having a total duration of six hours, the agenda would have to be flexible. Some kind of methodology would be required. The Committee had 18 members and the Sub-Commission had 26, all of whom might wish to speak. Some restrictions would therefore be needed for.

58. Mr. Garvalov's idea concerning the definition of a minority was interesting, but the subject had already been discussed in a working group of another United Nations body. It had been found to be complex and controversial, and no agreement had been reached. Nevertheless, it might be taken up at a later stage.

59. Mr. ABOUL-NASR reiterated his view that, for practical reasons, the time available to the joint meeting should not be taken up by the discussion of specific papers but should be used to concentrate on the two points he had mentioned earlier. He reserved his position in the matter and said that he would not take part in the joint meeting.

60. Mr. VIDAS said that, the joint meeting should explore ways in which the Sub-Commission could contribute to the implementation of the Convention, and examine the problem of coordination and the avoidance of overlapping and duplication. The joint meeting would be the first of its kind, and an evaluation would have to be made of the progress achieved at the meeting before any decision was taken to hold a second such meeting. In any effort to improve coordination between the two bodies, their quite different characteristics would have to be taken into consideration.

61. The CHAIRMAN said that he would like the Committee to take a unanimous decision; account should therefore be taken of Mr. Aboul-Nasr's position. The topics selected were not exhaustive, and every member would be able to raise topics of his choice.

62. Mr. SHERIFIS observed that the rapporteurs appointed to prepare the various papers would presumably express their own personal views, not those of the Committee as a whole. He agreed that 10 minutes would be a reasonable amount of time for them to make their introductory statements. However, if all members present at the joint meeting were to speak for 10 minutes, the total time required would be 7 hours and 20 minutes. A limit should therefore be imposed on the time allotted to each speaker, and also on the time allotted for every item. One hour for each paper ought to be enough. In addition, time would have to be found for discussing coordination and cooperation between the two bodies. He reminded the Committee that the paper to be prepared by Mr. Yutzis was to include a subitem on racial discrimination resulting from armed conflict.

63. The CHAIRMAN said that the papers prepared by the rapporteurs would certainly reflect their own views, but members might like to see the papers in advance. Strictly organizational matters such as time-limits on statements could perhaps be more usefully dealt with in discussions between himself and the Chairman of the Sub-Commission shortly before the joint meeting.

64. Mr. YUTZIS explained that he would not take up the question of racial discrimination resulting from armed conflict as a separate item but would certainly include it as one of the many trends involving racism.

65. The CHAIRMAN said that he would not invite the Committee to take any decision immediately, because before doing so he would like to have a talk with Mr. Aboul-Nasr about an apparent misunderstanding.

66. In response to a question asked by Mr. Vidas, about the current session, he said that there would be no need for the Committee to discuss the world situation with regard to racial discrimination, since the subject had been amply dealt with under other items.

The meeting rose at 1.10 p.m.

CERD/C/SR.912
26 April 1991

ENGLISH
Original: FRENCH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Thirty-ninth session

SUMMARY RECORD OF THE 912th MEETING

Held at the Palais des Nations, Geneva
on Wednesday, 20 March 1991, at 3 p.m.

Chairman: Mr. SHAHI

CONTENTS

Action by the General Assembly at its forty-fifth session (continued)

(b) Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights (General Assembly resolution 45/85) (continued)

Submission of reports by States parties under article 9, paragraph 1, of the Convention (continued)

Second Decade to Combat Racism and Racial Discrimination (continued)

The meeting was called to order at 3.40 p.m.

ACTION BY THE GENERAL ASSEMBLY AT ITS FORTY-FIFTH SESSION (agenda item 2) (continued)

(b) EFFECTIVE IMPLEMENTATION OF INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS, INCLUDING REPORTING OBLIGATIONS UNDER INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS (GENERAL ASSEMBLY RESOLUTION 45/85) (continued)

Incorporation of the Consolidated guidelines for the initial part of the reports of States parties into the Revised general guidelines concerning the form and contents of reports by States parties under article 9, paragraph 1, of the Convention (CERD/C/70/Rev.1; A/45/636; HRI/1991/1)

1. The CHAIRMAN reminded the Committee that a working group had been set up to consider how the Consolidated guidelines for the initial part of the reports of States parties - appended to document A/45/636 and approved by the General Assembly - might be incorporated into the Revised general guidelines (CERD/C/70/Rev.1), which had been adopted by the Committee and had been in force for some years. In accordance with the recommendations of that working group, the Committee had, at its 898th meeting, decided to replace the first part of the Revised general guidelines by the Consolidated guidelines, with the exception of paragraph (a) of the Revised general guidelines, which would be incorporated in the second part of the otherwise unchanged Revised general guidelines.

2. The Committee was now required to take a decision on Mr. Banton's proposal that the new first part of the Revised general guidelines should be slightly amended in order to include more details on the ethnic characteristics of the population that States parties were asked to describe in their reports.

3. Mr. BANTON observed that at the 898th meeting he had proposed an addition, the text of which had since been distributed to members. He had understood that the Committee would reconsider that proposal at its current session, but Mr. Lamptey felt that the Committee should not consider it until the August session.

4. Mr. LAMPTEY said that the Committee had indeed decided, at its 898th meeting, to adopt the Consolidated guidelines as the first part of the Committee's General guidelines, with some changes. During the exchange of views on Mr. Banton's proposal at that meeting, he (Mr. Lamptey) had argued that the proposed addition was not necessary, that in any case it called for further study and that the Committee should therefore resume consideration of the proposal, and of the model report, at its August session. He understood that to have been the Committee's decision.

5. The CHAIRMAN noted that Mr. Banton had proposed an addition to the new first part, but Mr. Lamptey had been right to point out that the Committee had already decided to defer until its August session consideration of that proposal and of the draft model report.

6. Mr. HOUSHMAND (Representative of the Secretary-General) said he wished to clarify certain aspects of the question. At its summer session in 1989, the Committee had had before it the Consolidated guidelines for the initial part of the reports of States parties and had approved them. Other committees monitoring the implementation of various instruments had also made their views known and those had all been incorporated in the present version of the Consolidated guidelines. That version had been approved by the General Assembly and was at present being sent to all States parties which requested it. The Committee could not therefore amend that version of the Consolidated guidelines.

7. The only amendments on which the Committee could still express its views would relate to the second part of the General guidelines, in which it could decide to include the wording proposed by Mr. Banton.

8. Mr. ABOUL-NASR asked the representative of the Secretary-General if there was at present a single document that could be sent to a State party which requested one for assistance in preparing its report.

9. Mr. HOUSHMAND (Representative of the Secretary-General) replied that there was. It was the document entitled "Consolidated guidelines for the initial part of the reports of States parties" and concerned what could be called "the country profile", i.e. technical information, statistical data, and the general legal framework within which human rights were protected. Pursuant to the decision taken by the third Meeting of persons chairing the human rights treaty bodies, which had now been approved by the General Assembly, that information would be sought from States parties to all international human rights instruments only once every five years. From that information the Secretariat would produce a basic document, to be regularly updated, which would be made available to every Committee when it came to consider a State party's report. The Revised General guidelines of the Committee would therefore in future concern only the second part of the reports State parties were required to submit pursuant to the International Convention on the Elimination of All Forms of Racial Discrimination.

10. Mr. LAMPTEY asked the Secretariat to produce for the members of the Committee, if possible by the morning of 22 March, a single document containing both the Consolidated guidelines and the Revised general guidelines of the Committee as now revised in the second part. That document should contain, in their present form the Revised general guidelines concerning the form and contents of reports by States parties under article 9, paragraph 1, of the Convention.

11. With regard to Mr. Banton's proposal, he stressed that the Committee had decided to postpone consideration until its August session, by which time members would have considered the manual and would have all the relevant documents before them.

12. Mr. BANTON said there was no doubt that when he had submitted his proposal at the 898th meeting, the members of the Committee had unanimously agreed that its consideration should be postponed. That was quite clear from the summary record of the meeting: thus, Mr. Ferrero Costa had expressed the view that in order to reach agreement on the text proposed by Mr. Banton,

members need only wait for the text to be circulated and for them to have an opportunity to study it; the Chairman had agreed that that would be the best procedure (CERD/C/SR.898, p. 5 of the English version). He (Mr. Banton) had therefore thought that, as the text had been circulated one week earlier, it could have been considered at the current meeting. However, after the explanation given by Mr. Houshmand as to the exact status of the Consolidated guidelines, it was clear that the Committee would have to postpone consideration of the proposal until its August session and that there was no difference of opinion on that point between members.

13. On the other hand, there did seem to be substantive disagreement between Mr. Lamptey and himself over the actual text of the proposed addition. Mr. Lamptey felt that the questions dealt with in the proposed text had already been dealt with elsewhere, while all that he (Mr. Banton) had found in the existing Revised general guidelines was that the States parties should "endeavour to include in their reports ... relevant information on the demographic composition of the population". In his opinion and to judge by talks members of the Committee had had with the representatives of Uruguay, Malta and other States parties, that invitation to provide relevant information on the demographic composition of the population did not enable the Committee to obtain the information it needed from a number of States parties. There therefore seemed to be some justification for an addition which expressed the Committee's specific interest in information relating to differences of race, colour, descent, or national or ethnic origin.

14. Mr. ABOUL-NASR, referring to the addition proposed by Mr. Banton, said that mother tongue was not an indicator of ethnic origin. In east Africa, for instance, Swahili was the mother tongue of populations with very different ethnic origins. The whole question should be given further study and its consideration should be postponed until the Committee's next session.

15. The CHAIRMAN said that the Secretariat would endeavour to prepare the document requested by Mr. Lamptey.

16. If there was no objection, he would take it that the Committee wished to adopt the Consolidated guidelines and would consider the questions relating to them, together with Mr. Banton's proposal, at its next session.

It was so decided.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 9, PARAGRAPH 1, OF THE CONVENTION (agenda item 3) (continued)*

Report of the Working Party on the Suggested Model Report

17. Mr. BANTON said that the document which had been distributed to members of the Committee entitled "Report of the working party on the suggested model report" was designed to acquaint them with the current status of the model report. The names of three Committee members were mentioned at the foot of

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* Resumed from the 909th meeting.

the first page, but that did not mean that all three had approved it. The Committee would perhaps have a document of that kind before it at its August session. He would be pleased to receive any suggestions members might like to make on the current preliminary version. At its August session, the Committee would probably have to decide to send the model report to the staff members at the Centre responsible for the training session envisaged under the technical assistance programme, asking them to use it on an experimental basis, to let the Committee know in due course if the model report had been useful in the training and to inform it of anything they might have learnt from using it.

SECOND DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION (agenda item 7) (continued)

Preparations for a joint meeting of the Committee on the Elimination of Racial Discrimination and the Sub-Commission on Prevention of Discrimination and Protection of Minorities (continued)

18. The CHAIRMAN reminded members that three papers were to be submitted to the day-long joint meeting of the Committee and the Sub-Commission in August 1991. A first paper, prepared by Mr. Wolfrum, would be on the topic "Conflicts between human rights". It would have been circulated in advance to members of the Committee, but would nevertheless be submitted by Mr. Wolfrum and not by the Committee as a whole. The two other topics, which had been approved by the Sub-Commission, were "Cooperation between different human rights bodies to prevent overlapping", on which Mr. Ferrero Costa would prepare a paper, and "The world situation with regard to racism and racial discrimination", including racial discrimination resulting from armed conflicts, on which Mr. Yutzis was to prepare a paper. He (the Chairman) now had to confirm to the Sub-Commission that those were the three topics to be considered. It was, however, understood that Committee members would have every opportunity to raise any other topic - of a general or specific nature - they might wish to be considered during the meeting.

19. As to the methodology which would enable the best use to be made of the six hours of dialogue that the joint meeting would represent, certain opinions had been expressed, concerning time-limits on statements, for example, but no decision had yet been taken. During the Committee's August session, consultations with members of the Sub-Commission would be possible and the outcome of those consultations would be communicated to the Committee for approval.

20. Mr. YUTZIS suggested that the Chairman should contact the Chairman and secretariat of the Sub-Commission as soon as possible in order that the agenda for the joint meeting and the procedure whereby the exchanges of views would take place might be made known at the earliest opportunity.

21. The CHAIRMAN said that he could suggest two ways of resolving those questions of methodology: meeting representatives of the Sub-Commission or sending them a letter. Until now, a meeting had not proved possible.

22. Mr. ABOUL-NASR said he hoped that communication between the Committee and the Sub-Commission would take place at the same level, either at the rapporteur level or at the level of the Chairmen.

23. The CHAIRMAN suggested that correspondence between the Committee and the Sub-Commission should be entrusted to a rapporteur.

24. If there was no objection, he would take it that the Committee approved the procedures suggested.

It was so decided.

The meeting rose at 4.15 p.m.

CERD/C/SR.913
26 March 1991

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Thirty-ninth session

SUMMARY RECORD OF THE 913th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 22 March 1991, at 10 a.m.

Chairman: Mr. SHAHI

CONTENTS

Submission of reports by States parties under article 9, paragraph 1, of the Convention (concluded)

Action by the General Assembly at its forty-fifth session (concluded):

(b) Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights (General Assembly resolution 45/85) (concluded)

Second Decade to Combat Racism and Racial Discrimination (concluded)

Closure of the session

The meeting was called to order at 10.30 a.m.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 9, PARAGRAPH 1, OF THE CONVENTION (agenda item 3) (concluded) (CERD/C/212)

1. The CHAIRMAN drew attention to a document prepared by the Secretariat containing the provisional timetable for consideration of reports of States parties at the Committee's fortieth session. It remained to confirm the designation of rapporteurs entrusted with the preliminary examination of States parties' reports. Mr. Foighel would be the rapporteur for Iraq, Mr. Wolfrum for Australia, Lebanon, Togo and Fiji, Mr. de Gouttes for Bulgaria and Côte d'Ivoire, Mr. Lamptey for Gambia, Guinea and Sierra Leone, Mr. Vidas for Swaziland, Mr. Banton for Zaire, Mr. Yutzis for Gabon, Mrs. Sadiq Ali for Uganda, Mr. Sherifis for the Bahamas and Mr. Ferrero Costa for Belgium.

2. Mr. VIDAS asked whether the Secretariat could clarify the position in regard to the consideration of the report of Iraq, which was again on the agenda for the next session.

3. Mr. HOUSHMAND (Representative of the Secretary-General) said that the timetable was a tentative one. The usual practice was that Governments whose reports were scheduled for consideration at the next session were duly informed. Any change at the request of the Governments concerned would be conveyed to the Committee and the timetable adjusted accordingly.

4. Mr. WOLFRUM suggested that, given the uncertainty about Iraq's representation at that session, consideration of its report might be rescheduled to an afternoon meeting.

5. The CHAIRMAN said that Mr. Wolfrum's suggestion had been noted.

6. Mrs. SADIQ ALI asked whether the Secretariat was expecting any other reports from States parties.

7. Mr. HOUSHMAND (Representative of the Secretary-General) said that he understood that the report of Germany was currently in preparation and would be available shortly. It would be sent to all Committee members. It was for the Committee to decide whether or not to include consideration of that report at its next session; if so, it might wish to designate a rapporteur.

8. Mr. BANTON suggested that a rapporteur might be designated tentatively in case Germany's report was submitted in time.

9. Mr. SHERIFIS said that it would be premature to designate a rapporteur before knowing whether the report would be on the agenda.

10. Mr. ABOUL-NASR pointed out that in the case of Germany, as in that of Yemen, a new situation had arisen; it should be made clear whether the Committee would be considering the reports of two separate State parties prior to unification, or that of a single State.

11. **Mr. WOLFRUM** said that, from the point of view of international law, the German Democratic Republic had opted for the adoption of the Constitution of the Federal Republic of Germany; there had remained, therefore, only one subject, namely the Federal Republic of Germany, now renamed Germany. There would accordingly be only one report. He did not know whether it covered the period prior to unification or following it, or both.

12. **Mr. VIDAS** requested clarification from the Secretariat on the matter.

13. **Mr HOUSHMAND** (Representative of the Secretary-General) said that States parties reported on the entire territory under their jurisdiction. The State in question, as a party to the Convention, would be reporting as a united Germany.

14. **Mr RESHETOV** said that it was more a question of de facto interpretation than of international law as such. There had, for instance, been doubts cast on the provisions of the Constitution of the Federal Republic of Germany in the past. The report submitted would be expected to reflect the actual situation in Germany and the Committee would need to be given a faithful picture of the prevailing situation in all parts of Germany in order to make a comprehensive assessment.

15. **Mr. LAMPTEY** said that when the report was submitted it would obviously cover the whole territory of Germany. He felt, however, that the discussion was irrelevant since there was no clear indication of whether in fact the report would be available in time for consideration at the next session.

16. **Mr. HOUSHMAND** (Representative of the Secretary-General) said that his understanding was that the report would be received within a few weeks; however, it was for the Committee to decide whether or not it wished to add it to its agenda.

17. **Mr. LAMPTEY** said that the logical procedure would be for the Bureau to meet following receipt of the report of Germany or any other State party not provided for in the tentative timetable, and to decide, on the basis of available time at the session, whether or not to include it.

18. **The CHAIRMAN** said that, if there was no objection, he would take it that the Committee agreed to Mr. Lamptey's suggestion.

It was so agreed.

19. **The CHAIRMAN** drew attention to document CERD/C/212, which listed the States parties whose reports were overdue: the matter of overdue reports was one of great concern. As had been agreed earlier, he himself would be sending letters to those States parties whose overdue reports were to be considered at the Committee's next session. He said that if there was no objection, he would take it that the Committee wished the Secretariat, in accordance with the usual practice, to send out reminders to the countries concerned.

It was so decided.

ACTION BY THE GENERAL ASSEMBLY AT ITS FORTY-FIFTH SESSION (agenda item 2) (concluded):

(b) EFFECTIVE IMPLEMENTATION OF INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS, INCLUDING REPORTING OBLIGATIONS UNDER INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS (General Assembly resolution 45/85) (concluded)

20. The CHAIRMAN, referring to the discussion that had taken place at the 898th meeting, said that, if there was no objection, he would take it that the Committee agreed on the final new version of its revised general guidelines, incorporating the consolidated guidelines for the initial part of the reports of States parties (HRI/1991/1) and the Committee's revised general guidelines concerning the form and contents of reports by States parties under article 9, paragraph 1, of the Convention (CERD/C/70/Rev.1); the new version, a copy of which had been circulated to Committee members, would be finalized by the Secretariat and sent to States parties.

It was so decided.

21. The CHAIRMAN drew attention to the discussion held at the 900th meeting concerning the designation of members of the Committee to maintain liaison with other United Nations human rights bodies. He confirmed the list of members announced by Mr. Wolfrum at that meeting, adding that Mr. Lechuga Hevia would be responsible for liaison with the Committee on the Rights of the Child, Mr. Vidas with the Committee against Torture and Mr. Banton with the Committee on the Elimination of Discrimination against Women.

22. In reply to a request by Mrs. SADIQ ALI for information about the relevant Conventions, he referred to the conclusions and recommendations of the report of the third meeting of persons chairing the human rights treaty bodies (A/45/636) which stated that all relevant documents should be made available to all members of the treaty bodies, assuring Mrs. Sadiq Ali that she could obtain the necessary documents from the Secretariat.

23. In response to Mr. ABOUL-NASR's request for clarification of the meaning of "liaison" in that context, he referred him to paragraph 57 of the same report and to the Committee's discussion at its 900th meeting on the designation of members to liaise with other bodies.

SECOND DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION (agenda item 7) (concluded) (A/45/443 and 525)

24. The CHAIRMAN recalled that the Committee, in decision 1 (XXXIV) adopted at its thirty-fourth session, had "noted with interest" the idea that a special meeting of States parties should be convened during the period 1990-1993 to assess experience gained in implementation of the Convention. In the course of discussion at the current session, it had been pointed out that in any case a meeting of States parties was to be held in January 1992, and thus there would be no need for a special meeting to be convened to discuss that particular point. It had been suggested that the meeting might perhaps

be extended for one day for that purpose. The Committee needed to decide whether it was to propose, in its report to the General Assembly, that the meeting should be extended, and also needed to decide what its own contribution on the subject was to be.

25. He suggested that consideration of that question should be deferred until the Committee's next session.

It was so agreed.

Publicizing the work of the Committee

26. Mr. de GOUTTES said the Chairman had referred earlier to the possibility of issuing a press release. Was it still intended to prepare such a press release, and if so, what would it contain?

27. The CHAIRMAN said he had in fact suggested such a possibility. However, the issuing of a press release would depend on the willingness of members of the Committee to spend the necessary time preparing it.

28. Mr. ABOUL-NASR said he was not in favour of issuing a press release because the Committee did not in fact have much to communicate.

29. Mr. WOLFRUM said he did not entirely share that view. While it was true that the Committee had considered only a small number of reports, it had discussed them intensively and in depth, and a very thorough assessment had been made of each. He himself could think of a number of aspects of the Committee's work during the session which might be of interest to the Press.

30. The CHAIRMAN invited Mr. Wolfrum to indicate the points of interest he had in mind.

31. Mr. WOLFRUM said he considered it worth mentioning that the Committee had discussed in some detail the reports of Canada, the United Kingdom, Sweden and Uruguay. As part of a new procedure, general assessments had been made of each of those reports, assessments which would form part of the Committee's report to the General Assembly. The Committee had also had an extensive discussion of what it might contribute to the Second Decade to Combat Racism and Racial Discrimination, as well as how it might mark Human Rights Day. There had been two long discussions with the Under-Secretary-General for Human Rights on the human rights situation worldwide and on the causes of racial discrimination, and views had also been exchanged on the Committee's possible input to the forthcoming joint meeting with the Sub-Commission on Prevention of Discrimination and Protection of Minorities. Finally, the Committee had had a useful debate on how to deal with the problem of overdue reports.

32. Mr. de GOUTTES said he was grateful for those suggestions. The Committee should not underestimate the importance of press coverage, particularly since in the past it had often deplored the fact that it suffered from a certain isolation from the outside world. If the Committee wanted its work to become better known, it was most important that a final press release should be prepared, and circulated as widely as possible.

33. Mr. BANTON said that a year ago he had helped to organize a one-day meeting in London to commemorate the Committee's twentieth anniversary, to publicize its work, and to state the case for a United Kingdom declaration under Article 14 of the Convention. Unfortunately, the meeting had aroused no press interest whatever. While it was most important to establish a dialogue with journalists, that could best be done by arranging question-and-answer sessions which would enable newspapers to devise material for publication in a style which would arouse the interest of their readers. More could be done by the Information Service in Geneva to help journalists from reporting States to publicize the Committee's work in their own countries, for example by letting them know in advance the days on which reports were to come up for consideration, and by giving them some access to the country rapporteur.

34. Mr. VIDAS suggested that a small working group might meet after the closure of the session to prepare a press release.

35. Mr. RESHETOV urged that members of the Committee should also do all they could to publicize the Committee's work in their own countries. He knew that Mr. Banton and Mr. Wolfrum had already been active in that direction, and he himself had written articles on the work of the Committee's last session for specialist journals in the Soviet Union.

36. Mr. YUTZIS said the question of how best to publicize the Committee's work had been under discussion for some considerable time. As he saw it, the reason that no agreement had yet been reached was because no proper communications strategy had ever been developed. He could agree that a small group might be set up to prepare a press release, which would include the points listed by Mr. Wolfrum, but would further propose that at the next session the Committee include on its agenda the question of a communications strategy. The adoption of such a strategy would avert the need to improvise at the last moment, as the Committee was now doing.

37. Mr. SONG Shuhua said that some of the ideas put forward were quite new, and the Committee should not proceed too hastily. He would prefer that any press conference to publicize the Committee's work should be deferred until the next session.

38. Mr. HOUSHMAND (Representative of the Secretary General) pointed out that since the foundation of the United Nations it had been the practice at the end of a session of bodies such as the Committee, for the Press Unit of the Information Service to issue a press release, giving the highlights of the session's work. While that was of course not the same as a press release prepared by Committee members themselves, the information might perhaps be helpful to them.

39. The CHAIRMAN was of the view that a draft prepared by the Committee itself was more likely to do justice to the achievements of the session. He suggested that a working group consisting of Mr. Wolfrum, Mr. de Gouttes, Mr. Sherifis and Mr. Yutzis should meet immediately after the session to draft a press release, and that, as proposed by Mr. Yutzis, the subject of a communications strategy would be included on the agenda of the next session.

It was so decided.

CLOSURE OF THE SESSION

40. After an exchange of courtesies, the CHAIRMAN declared the session closed.

The meeting rose at 11.40 a.m.